

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
OF THE VIRGINIA GENERAL ASSEMBLY**

**Minority-Owned
Business Participation
in State Contracts**

House Document No. 53 (1996 Session)

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Preface

House Joint Resolution 554 of the 1995 General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) to study minority-owned business participation in State contracts. This review was undertaken to develop reliable information on the number and magnitude of State contracts with minority-owned businesses.

Based on JLARC's review of FY 1995 data, the State paid minority firms more than \$108 million for goods and services. This amount represents 3.9 percent of a FY 1995 State expenditure base of \$2.78 billion.

The Commonwealth does not have set-aside or preference programs for minority firms competing for State business. However, State law prohibits discrimination and promotes the inclusion of minority firms in the procurement process. Additional oversight and inter-agency cooperation are needed in the area of minority-owned business solicitation to enhance compliance with existing statutes.

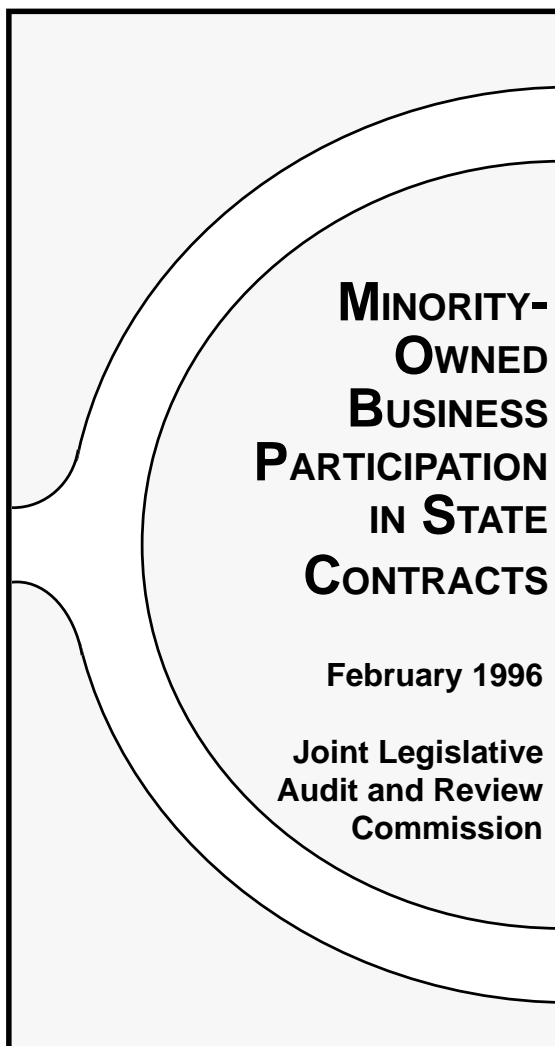
The report recommends that an inter-agency task force should be convened by the Secretary of Administration to promote cooperation among State agencies with minority business procurement responsibilities. In addition, it is recommended that the responsibility for preparing minority participation reports be removed from approximately 100 State departments currently preparing them and transferred to the Department of Minority Enterprise and the Department of Accounts. A bill was introduced during the 1996 Session to effect this change.

The majority of recommendations in this report have received the support of the Secretary of Administration, the Secretary of Commerce and Trade, the Department of General Services, the Department of Minority Business Enterprise, the Department of Transportation, and the University of Virginia. On behalf of JLARC staff, I would like to express our appreciation for the assistance provided by the staff of these secretariats and departments, personnel in minority-owned businesses, staff at minority business certification organizations, and the staff in other State agencies who assisted in our review.

Philip A. Leone
Director

February 9, 1996

JLARC Report Summary



The State's policies regarding minority-owned business activity in the public procurement process are largely governed by provisions of the Virginia Public Procurement Act. The Act emphasizes promoting competition and acquiring goods and services from the lowest responsible bidder. In addition, the Act prohibits discrimination and promotes the inclusion of minority-owned businesses in the State procurement pro-

cess. However, the State has no set-asides, quotas, or firm goals for minority business participation. While agencies have been encouraged to set voluntary goals and solicit minority bids and proposals, there is little oversight in this area by agencies with responsibility for minority procurement policy.

House Joint Resolution (HJR) 554, passed by the 1995 General Assembly, directed the Joint Legislative Audit and Review Commission (JLARC) to study "minority-owned business participation in State contracts." As a result of the mandate, JLARC researched State laws and policies related to minority-owned business participation in the State procurement process, assessed the amount of agency purchases of goods and services from minority-owned businesses, and identified exemplary programs for promoting minority-owned business participation in State contracts.

Minority-owned firms received over one hundred million dollars from business transactions with the State in FY 1995. Based on JLARC's review of FY 1995 data, the Commonwealth paid 1,235 minority firms more than \$108 million for goods and services. The \$108 million in State expenditures to minority firms represents 3.9 percent of a FY 1995 expenditure base of \$2.78 billion. JLARC's review of FY 1994 data showed \$83 million in State expenditures to minority firms. The \$83 million represents 3.5 percent of a FY 1994 base of \$2.4 billion.

Multiple provisions of the *Code of Virginia* prohibit discrimination on the basis of race, religion, color, sex, or national origin. Further, the State procurement process is open and relatively accessible. Mechanisms are in place to enhance the establishment, preservation, and strengthening of minority-owned businesses. However, a lack

of effective oversight, training, and coordination among State agencies may have limited minority-owned business participation in public procurement.

Statewide Expenditures for Procurement from Minority-Owned Businesses

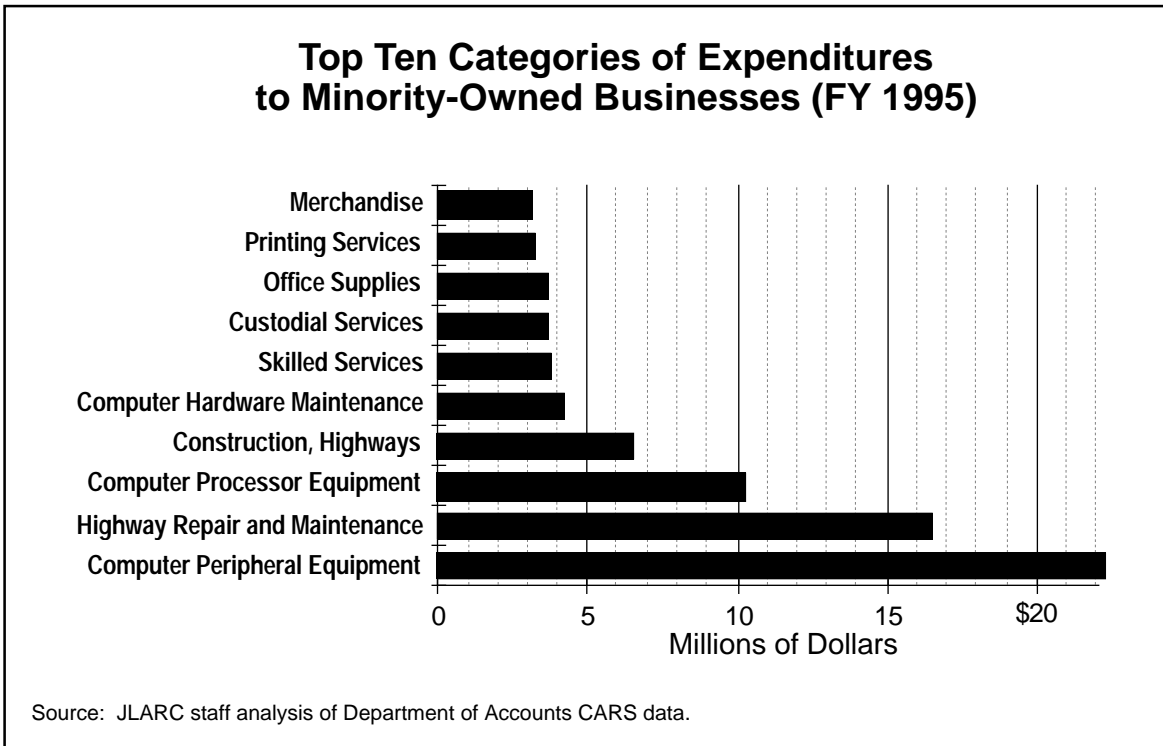
HJR 554 noted that “it is unknown how many [State] contracts are with minority-owned businesses [or] how many minority-owned businesses are aware of such contracts.” JLARC staff found that accurate and comprehensive data regarding State procurement activities with minority firms have not been available. To address this problem, JLARC conducted a systematic analysis of records maintained in the Department of Accounts’ Commonwealth Accounting and Reporting System (CARS).

Recognizing the limits of existing databases, JLARC acquired databases of minority vendors from a number of public and private sources. These sources provided a total of 4,830 minority-owned firms which

could be used in the analysis.

Federal identification numbers of the 4,830 firms on JLARC’s database were matched with 1,920,456 agency vendor transactions for 140 object codes for FY 1995 payments. These payments to vendors totaled \$2,783,537,829. Minority-owned businesses accounted for \$108,256,490 of these expenditures, or 3.9 percent of the total. A similar process was followed for FY 1994.

Most (71 percent) FY 1995 minority expenditures fell into 10 “object codes” or categories of expenditures (See figure below). The largest of these are in the computer area or in highway construction and repair. Moreover, five State agencies accounted for over one-half (52 percent) of State expenditures to minority-owned businesses (See table, opposite). These data represent a substantial improvement in the accuracy of available information on minority procurement. A change in the State’s process for reporting minority expenditures



is necessary to provide accurate data in compliance with existing statutory requirements for information on minority participation.

The Need for an Improved Database and Methodology for Assessing Minority Procurement Activity

The Department of Minority Business Enterprise (DMBE) is responsible for developing and distributing the Commonwealth's official list of certified minority-owned businesses. State agencies are required by the Code to include in solicitations "businesses selected from a list made available by DMBE." Agencies are also required to report payments to minority firms to DMBE. However, State agencies have encountered problems in both the minority-owned business solicitation and reporting processes.

Thirty-seven of 126 State agencies surveyed by JLARC said they had difficulty identifying minority businesses. In theory, the most accurate source of minority businesses should be the certification records of DMBE. As of July 1, 1995, DMBE had certified 1,752 minority-owned businesses. This number substantially under-represents the number of minority-owned firms available to do business with the State.

Other State agencies also have established lists of minority-owned businesses. Some of these lists, such as the Virginia Department of Transportation's and the University of Virginia's, include over a thousand minority businesses. Consolidation of these and other lists would enhance the ability of State agencies to identify minority-owned businesses, particularly in regions where agencies reported difficulties. Automation of the databases would make the list easier to update and access, making the information more timely and useful to State agencies.

DMBE is authorized by statute to collect, evaluate, and report on data involving minority-owned business activity. State agencies are required by statute to systematically collect data on minority business participation and report to DMBE. Collection of such data by agencies is expensive and time consuming. Data reported by agencies to DMBE have been neither systematically reported nor accurate. The State could increase the accuracy and efficiency of the reporting process by altering existing statutes to permit the collection of the data from an annual CARS analysis, similar to the one used in this study.

Agencies With the Largest Expenditures to Minority-Owned Businesses (FY 1995)

<u>Agency</u>	<u>Amount</u>	<u>Percent of Agency's Base¹</u>
Virginia Department of Transportation	\$31,643,352	2.80
University of Virginia	7,395,046	3.20
Department of Social Services	6,175,071	22.00
Virginia Community College System	5,559,758	7.70
Lottery Department	5,377,960	10.00

¹The agency base is the total dollar value of transactions for the 140 object codes selected for review.

Source: JLARC staff analysis of Department of Account's CARS data.

Oversight of Minority Procurement Activity

Minority-owned businesses desiring to provide the State with goods and services are subject to the Virginia Public Procurement Act, as are all other businesses. The Commonwealth does not give minority firms preference over non-minority firms competing for business with the State. However, the State has established provisions to ensure that minority-owned businesses have opportunities to participate in the State's procurement activities. Minority-owned businesses rely on State agencies' implementation of these provisions when competing for State contracts.

While the responsibility for implementing minority procurement provisions rests with State agencies, most State agencies do not fully comply with existing statutory provisions. In a survey of State agencies, JLARC learned that only 22 of 126 agencies report compliance with all existing *Code* provisions related to minority business solicitation. Only 52 of 126 surveyed agencies had established written programs regarding minority business solicitation, as required by the *Code of Virginia*.

Procurement policies direct DGS and DMBE to provide oversight in the minority-owned business solicitation process. As part of its oversight responsibilities, DGS provides assistance and training to State agencies procuring goods and services and to vendors competing for State contracts. DGS does not, however, review agency compliance with the minority procurement requirements of either the *Code* or the *Agency Procurement and Surplus Property Manual*. Further, some of the provisions of the procurement manual are unclear. Additional oversight, coordination, and clarity of policy are needed in order to ensure compliance with existing provisions of the *Code of Virginia* and DGS agency and vendor guidelines.

Best Practices Among State Agencies

A number of State agencies are doing a good job of attempting to incorporate minority-owned businesses into the public procurement process. Four State agency programs were selected as exhibiting best practices in the area of minority business solicitation. The programs selected seek to increase minority business participation while adhering to the State's low bid procurement policy. Best practice programs selected were:

- The University of Virginia's Office of Minority Procurement Programs,
- The Department of General Services' *Virginia Business Opportunities*,
- The Virginia Department of Transportation's Disadvantaged Business Enterprise (DBE) Orientation Program, and
- The Department of Minority Business Enterprise's Second Annual Opportunities for DBEs Information Session.

These best practice programs provide State agencies with examples for use in improving minority-owned business participation in State procurement.

Recommendations

This report proposes a number of recommendations to enhance compliance with existing statutory provisions related to the participation of minority-owned businesses in the procurement process. The report's recommendations include the following:

- The General Assembly may wish to amend the *Code of Virginia* to remove the responsibility for preparation of minority participation reports from State departments and agen-

cies and transfer the responsibility to the Department of Minority Business Enterprise and the Department of Accounts.

- An inter-agency task force should be convened by the Secretary of Administration to assist the Department of Minority Business Enterprise in the modification of the reporting process in the area of minority-owned business procurement. The task force should address issues of identifying and certifying minority businesses, the compilation and automation of lists, and other reporting issues.
- The task force should identify mechanisms for increasing cooperation between agencies with minority procure-

ment oversight, review, certification, and registration responsibilities.

- The task force should review methods to increase vendor training.
- The Department of General Services' Division of Purchases and Supply should incorporate agency minority business procurement activity into its procurement review process.
- The Department of General Services' Division of Purchases and Supply should clarify minority procurement policies in its *Agency Procurement and Surplus Property Manual*, and agency staff should emphasize compliance with the State's minority solicitation requirements in its training.

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I. Introduction

House Joint Resolution Number 554, passed by the 1995 General Assembly, directed the Joint Legislative Audit and Review Commission to study “minority-owned business participation in State contracts” (Appendix A). Under this mandate, JLARC has researched State law and policy, comprehensively assessed the amount of agency purchases of goods and services from minority-owned companies, evaluated components of the procurement process, and identified exemplary programs for promoting minority participation in State contracts.

MINORITY PROCUREMENT IN VIRGINIA

The policies of the Commonwealth of Virginia regarding minority procurement include provisions to prohibit both discrimination and preference. Consequently, there are no set-asides, quotas, or firm goals for minority participation. Agencies have been encouraged to set voluntary goals and solicit minority bids and proposals, but there is little oversight in this area and there are no sanctions for noncompliance. The State’s policy regarding minority business participation is largely governed by provisions of the Virginia Public Procurement Act. Relevant sections of the act generally provide for:

- non-discrimination on the basis of race, religion, color, sex, national origin;
- award of contracts based on acceptance of the lowest responsible bid;
- competitive negotiation or sole-source procurement under certain conditions.

In addition to these general criteria, provisions are made to promote non-discrimination and to encourage the development of minority business enterprises. Multiple provisions in the *Code of Virginia* prohibit discrimination on the basis of race, religion, color, sex, or national origin. An agency, the Department of Minority Business Enterprise (DMBE), has been established to promote the development of minority businesses. Further, public bodies are required to solicit proposals from minority firms and to report on their procurement activity.

Definition of Minority Business

A number of considerations affect the issue of whether or not minority businesses are receiving an appropriate share of the business the State does with private vendors. Among these considerations are the definition of minority businesses, the legality of preference programs, and the role of minority procurement programs within the State’s overall procurement process.

Definitions of race and minority business status can vary. This report uses the definition found in §2.1-64.32:1 of the *Code of Virginia*, which defines a minority business enterprise as one that is:

owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to Blacks, Hispanic Americans, Asian Americans, American Indians, Eskimos, and Aleuts.

The term “owned and controlled” means that minorities must own at least fifty-one percent of the business and that they must control the management and daily operations of the business. It should be noted that this report primarily addresses policies and programs related to *minority-owned* businesses, not *disadvantaged* businesses, which also includes small businesses owned by women.

Recent Court Rulings and Virginia Policy

Several recent U. S. Supreme Court decisions have called into question the minority procurement policies of local, state, and federal governments. These Court decisions have not explicitly struck down affirmative action programs such as set-asides or minority preferences. Rather, they have required that a difficult-to-meet “strict scrutiny” standard be applied to programs with racial preferences. Because no State programs in Virginia have racial preferences, the Court’s decision will have limited impact on current State government policies. These cases will, however, set limits on actions the State may consider taking in the future. In contrast, local government programs in Virginia have been directly affected. One of the Court’s decisions (*Croson*) overturned a City of Richmond set-aside program.

City of Richmond v. J.A. Croson Company, 1989. In this decision, the U. S. Supreme Court ruled that the City of Richmond’s 30 percent minority set-aside program was illegal. The Court ruled that the set aside was arbitrary and based loosely on population. When considering availability of minority firms, an intuitive argument is sometimes made that the number of minority-owned firms should be in rough proportion to the minority population in general. However, *Croson* stated “where special qualifications are necessary, . . . the relevant statistical pool for purposes of demonstrating discriminatory exclusion must be the number of minorities qualified to undertake a particular task.” Furthermore, the Court said that the “strict scrutiny” test must be applied to all local and state programs of racial classifications.

Strict scrutiny is the highest level of constitutional review. It requires that a government demonstrate a compelling interest in a race-based program, and further that the program itself be structured as “narrowly tailored” as possible to effectuate that purpose. Without a finding of very specific discrimination in public procurement, preference programs such as Richmond’s were found to violate the equal protection clause of the 14th Amendment to the *U. S. Constitution*. The requirement that the program be “narrowly tailored” meant that the racial distinctions incorporated in the program must be absolutely necessary in order to ensure the program’s success and that such distinctions did not extend any further than necessary so that third parties who had not participated in discrimination were not unduly burdened. The decision further

required that a preference program be the sole available remedy to discrimination, even when the evidence has met the heaviest burden of proof of discrimination. As a result of this decision, the City of Richmond had to modify its minority procurement programs.

Adarand v. Pena, 1995. In 1995, the Supreme Court extended *Croson's* standards to federal programs. The Court stated that "All racial classifications imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny."

The practical effect of *Adarand* will be to subject federal preference programs to the strict scrutiny standard. Set-aside programs addressed by *Adarand* are not used by Virginia agencies, however. Unlike the Colorado program affected by *Adarand*, wherein prime contractors are given additional compensation for utilizing minority subcontractors, the Virginia Department of Transportation (VDOT) has a voluntary program to meet the requirements of U. S. Department of Transportation regulations.

However, *Adarand* has had some influence on Virginia policy. The first effect of *Adarand* on VDOT has been to contribute to the lowering of the department's voluntary numerical target from 12 percent to 10 percent. (VDOT currently encourages prime contractors to make good faith efforts to subcontract with disadvantaged businesses. Disadvantaged businesses include small businesses owned by women or minorities.) *Adarand* also influenced VDOT to delete from contracts language relating to its goal of providing five percent of State-funded projects to disadvantaged businesses.

The broader effect of such Court rulings as *Croson* or *Adarand* will be to limit the range of options available to the State, were it to seek to increase minority participation in State contracts through a system of preferences or set-asides. The State's policy since the late 1960s and early 1970s, however, has been to prohibit discriminatory practices, not to establish programs involving preferences, set-asides, or monetary incentives.

Current Anti-Discriminatory Policies in Virginia

An era of statutory segregation in Virginia came to a close in 1970, when the General Assembly repealed sections 56-390 through 56-404 of the *Code of Virginia* relating to the "Segregation of the Races, etc." In addition, Article I, §11 of the *Constitution of Virginia*, effective July 1, 1971 provides for due process of law, and further protects the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin.

Other anti-discriminatory legislation passed since 1970 includes the Virginia Fair Housing Law (1972), the creation in 1975 of the Office of Minority Business Enterprise, now the Department of Minority Business Enterprise (DMBE), and the Virginia Fair Employment Contracting Act, also enacted in 1975. Approved March 24, 1975, this Act (§2.1-376 of the *Code of Virginia*) requires that a "contractor will not discriminate against any employee or applicant for employment because of race, religion,

color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor.” However, this Act also made it clear that preferences were not to be used. The Act was later amended in 1980 to include a section numbered §2.1-376.1, which prohibits discrimination in the awarding of State contracts.

Economic inequality was addressed in 1975 by the Equal Credit Opportunity Act, which made it unlawful for any creditor to discriminate on the basis of race, color, religion, national origin, sex, marital status, or age. The issue of employment discrimination was addressed in 1979, when the General Assembly enacted Section 2.1-116.10 of the *Code*, which declared “that it is the policy of the Commonwealth to provide equal employment opportunity to applicants and employees of the Commonwealth of Virginia on the basis of fitness and merit without regard to race, color, religion, national origin, political affiliation, handicap, sex or age.”

In 1982, the General Assembly enacted the Virginia Public Procurement Act, which enunciated the public policies of the Commonwealth pertaining to governmental procurement from nongovernmental sources. The Act includes, but is not limited to: (1) the prohibition of discrimination by a public body; (2) the establishment of programs to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions; (3) the prohibition of discrimination by a contractor; and (4) the creation of the policy concerning the acceptance of the lowest responsible bid. Section 11-44 of the Public Procurement Act requires that “no public body shall discriminate because of the race, religion, color, sex, or national origin of the bidder or offerer.” Current State procurement policy is largely based on this Act, which is discussed in detail in Chapter III of this report. Other statutory language prohibiting discrimination has been added periodically to the *Code of Virginia*.

As noted, current provisions of Virginia law prohibit both discrimination and preference. Agencies are required to solicit bids from minority companies, but the award of contracts is generally done on the basis of a low bid. Procurement practices and policies are overseen by the Department of General Services (DGS). Reporting requirements are in place for the Commonwealth to monitor the level of participation in State contracts, and these reports are administered by DMBE.

Department of Minority Business Enterprise

The primary mission of the Department of Minority Business Enterprise (DMBE) is to “promote the development and growth of the Commonwealth’s minority business sector through its increased utilization in domestic and international business transactions, improved access to capital and capital sources; and through strengthened Historically Black Colleges and Universities (HBCUs) and other minority institutions and minority business trade organizations.” The department is headed by a director appointed by the Governor. The director serves as a special assistant to the Governor for minority enterprise.

The Department of Minority Business Enterprise (DMBE) is responsible for certifying businesses to participate in the Commonwealth's minority business program with the exception of the disadvantaged business program administered by VDOT. As defined in the *Code of Virginia* and VR 486-01-02, certification means the process by which a business or business enterprise is determined to be a minority business enterprise for the purpose of reporting minority business participation in state contracts and purchases.

According to the *Code*, minority business enterprise means a business enterprise that is "owned and controlled by one or more socially and economically disadvantaged persons." A certification number is assigned to approved businesses which is valid for two years from the date of approval. A recertification procedure is initiated prior to the expiration date.

The Office of Agency Procurement Services (OAPS), located within the DMBE, processes applications for certification for businesses to participate in the Commonwealth's minority business program. The other missions of the OAPS are to provide direct marketing assistance to minority business owners, and to help increase sales of minority businesses. In addition to implementing the certification program, other OAPS programs include, but are not limited to, the following:

- coordinating the annual agency procurement reporting and forecasting programs,
- producing or hosting conferences and trade shows,
- providing direct marketing assistance, and
- offering procurement and proposal development workshops.

Section 2.1-64.38 of the *Code* calls for the collection of data by DMBE and states that "each participating State department or agency shall report to the Director on a timely basis." In other words, State departments and agencies are responsible for developing and implementing systematic data collection processes which will provide DMBE with current data helpful in evaluating and promoting the efforts of the Commonwealth's minority business program. This information is compiled and then used to develop DMBE's annual procurement report. Through the use of the annual report, DMBE has tracked State spending with minority businesses. This report is discussed in greater detail in Chapter II.

In addition, DMBE produces a list of minority-owned businesses to promote the successful operation of minority business enterprises. State agencies are required by §11-44 of the *Code* to include in solicitations "businesses selected from a list made available by the Department of Minority Business Enterprise." As of July 1, 1995, DMBE's list included 1,404 certified minority businesses and a total of 2,256 minority businesses. The list is intended to be used as a resource by "each public body" in its efforts to comply with the discrimination prohibition of §11-44. DMBE also works with the

Virginia Department of Transportation. The two agencies have a Memorandum of Agreement which details areas wherein DMBE has agreed to support VDOT MBE programs.

Virginia Department of Transportation Program

The Virginia Department of Transportation (VDOT) is responsible for the construction, maintenance, and administration of the third largest state-maintained highway system in the nation. It is the largest procurer of minority business of any State agency. VDOT reported that it did \$39 million in business with minority firms in FY 1994 and \$19 million in FY 1995. JLARC figures on VDOT purchases are somewhat different (\$21.1 million in FY 1994 and \$31.6 million in FY 1995), as discussed in Chapter II, but confirm that VDOT is the State's largest purchaser from minority businesses.

In 1982, Congress mandated the establishment of a Disadvantaged Business Enterprise (DBE) program in every state and directed that 10 percent of federal-aid highway monies be spent with small businesses owned and controlled by socially and economically disadvantaged individuals. This category now includes minorities, women, and small businesses. As noted earlier, VDOT has administered this program by encouraging prime contractors to voluntarily use subcontractors in these categories. In 1987, VDOT set a higher goal of 12 percent, which it kept until July 31, 1995, when it dropped its goal to the federally required 10 percent. On August 2, 1995, VDOT revised its State program for "Use of Minority Business Enterprise." The new policy alters language stipulating that contractors working on State programs "shall take all necessary and reasonable steps to ensure that MBEs have the maximum opportunity to compete for and perform work on the contract." It replaces this language with "the contractor is encouraged to take necessary and reasonable steps to ensure that MBEs have the maximum opportunity to compete for and perform work on the contract, including participation in any subsequent contracts." Other changes to the policy include the substitution of "is encouraged" for "shall" and the replacement of the words "affirmative action" with "reasonable steps."

JLARC REVIEW OF MINORITY PARTICIPATION IN STATE CONTRACTS

House Joint Resolution (HJR) 554, passed by the 1995 General Assembly, directs the Joint Legislative Audit and Review Commission (JLARC) to study "minority-owned business participation in State contracts" (Appendix A). As a result of this mandate, the thrust of JLARC's research has been to comprehensively identify the amounts of business done by State agencies with minority businesses. The review of minority-owned business contracts is directed to focus on "the involvement of minority-owned businesses in state business through contracts with the Commonwealth." The resolution also acknowledges that "it is unknown how many minority-owned businesses are aware of such contracts," implying a review of State programs which inform minority companies of business opportunities with the State.

To satisfy the requirements of HJR 554, research activities were conducted to address six primary issues:

- What are the types of business/contracts with the State for which minority-owned businesses are both eligible and available?
- What constitutes a minority-owned business?
- What is the level of participation/involvement in State contracts?
- Does the State's process for procuring goods and services allow for fair participation by minority businesses?
- Are there any barriers to successful participation by minority businesses in the State procurement process?
- To what extent are MBEs aware of the opportunities for participation in State business/contracts?

In addition, the review identified some agency programs which could be identified as "best practices." Best practices reviews are typically associated with benchmarking efforts in the private sector. Some public sector performance reviews have also begun to utilize this technique. The purpose of a best practice review is to identify successful programs or processes which can be emulated by similar organizations.

A variety of research methods were used during the study to address study issues, including: literature and document reviews, file and report reviews, data review and analysis, structured interviews, and a survey of State agencies.

Literature and Document Reviews. Defining and identifying minority businesses involved extensive literature and document reviews. Federal statutes and documents, State statutes and documents, and U.S. Supreme Court decisions were used in determining State and federal policies relating to minority procurement. Written agency policies on procurement and minority solicitation were also reviewed. While JLARC's study of minority procurement is not a "disparity" study, numerous disparity studies were reviewed, including those conducted for New Jersey, North Carolina, New York, Maryland, and the City of Richmond. A general literature review was conducted to assess issues relating to race, set-asides and preference programs, procurement policies, and issues of economic equity.

File and Report Reviews. File and report reviews were conducted at the Department of Minority Business Enterprise and the Department of General Services. All agency minority procurement reports submitted to DMBE in 1994 and 1995 were reviewed. More detailed minority procurement reports were also requested and received from some larger State agencies and reviewed. Agency procurement reports were used extensively to develop the database of minority businesses used for this report.

Data Review and Analysis. A comprehensive search of 1994 and 1995 computer records of the Commonwealth Accounting and Reporting System (CARS) was conducted. This activity involved searching vendor transaction records for 140 object codes of every State agency. This extensive data exercise produced the reports of expenditures presented in Chapter II. A more detailed discussion of the methodology is contained there.

Structured Interviews. Public and private sector experts, agency representatives, and others involved in both procurement and minority issues were interviewed. Meetings were held with minority business groups which requested information on the study. Minority business groups were also given the opportunity to review the database of minority businesses developed for this report. Structured phone interviews were conducted with minority businesses receiving standing State contracts for FY 1995.

Survey of State Agencies. A survey of 126 State agencies with independent procurement authority was conducted. A copy of the survey is provided at Appendix B.

Report Organization

This report consists of four chapters. Chapter I has provided background on minority procurement issues and methods used to address them. Chapter II presents information on the level of State spending with minority firms. Data are presented for the State as a whole, for secretariats, and for individual agencies. Chapter III presents a review of State procurement policies and agency compliance with them. Chapter IV contains information on best practices of various agencies in the area of minority procurement.

II. State Procurement of Goods and Services From Minority-Owned Businesses

As noted in HJR 554, the State is “party to many contracts with businesses of all kinds each year.” However, accurate and comprehensive information regarding payments made to minority-owned businesses and data regarding State procurement activities with minority firms have not been available. To address this problem, JLARC conducted a systematic analysis of records maintained in the Department of Accounts Commonwealth Accounting and Reporting System (CARS). The results, reported in this chapter, provide substantially more accurate data concerning payments made to minority-owned businesses. In order to improve the collection, summarization, and dissemination of this type of data, enhanced cooperation among State agencies will be necessary. This chapter discusses the (1) issues surrounding State expenditures for procurement, (2) study findings on statewide expenditures for minority procurement, (3) expenditures by secretarial area, (4) agency-level spending, and (5) the need for an improved methodology for assessing minority procurement.

ISSUES IN ASSESSING STATE EXPENDITURES FOR PROCUREMENT OF GOODS AND SERVICES

In order to examine the State’s procurement of goods and services from minority-owned businesses, JLARC staff analyzed payments to minority-owned businesses. The bulk of the analysis consisted of identifying transactions where State agencies made payments to private sector businesses. Analysis of the Department of Accounts Commonwealth Accounting and Reporting System (CARS) data was conducted at the overall State, branch, secretarial, agency and discreet minority-owned business levels. For FY 1994 and FY 1995, the team measured, but did not limit its analysis to, the following:

- the number of minority businesses that received State payments,
- the total amount of payments made to minority firms,
- the amount of payments made to minority-owned businesses by categories of expenditure or object code,
- the distribution of payments made to minority-owned businesses between in-state and out-of-state firms,
- the distribution of payments to minority businesses between certified and uncertified firms,

- the distribution of payments to minority-owned businesses across secretariats and branches of government,
- the amount of payments made to minority-owned businesses by individual State agencies, and
- the amount of payments made by agencies to minority-owned businesses by categories of expenditure or object code.

Expenditure data for the above measures was obtained from a match/merge between a database of the federal identification numbers of minority-owned businesses compiled by JLARC and expenditure records of the Department of Accounts Commonwealth Accounting and Reporting System. Compiling a comprehensive database of minority firms and their respective federal identification numbers for use in this analysis posed a number of fairly significant challenges which will be discussed later in this chapter. However, the difficulties encountered during the exercise indicate the need for an improved database of minority firms and for establishing a consistent methodology for assessing minority procurement.

Finally, the database of CARS records was selected from invoice expenditures, that is, a database of payments to vendors. Use of invoice expenditures provided for the exclusion from the database of inappropriate transactions, such as inter-agency transfers and expenditures for employee benefits, salaries, special payments and wages of State employees.

Data from State payments to minority-owned businesses was compared to total State payments to determine the level of minority involvement in State contracts. Consequently, data were collected on both payments to minority-owned businesses and total State payments to private sector companies.

STATEWIDE EXPENDITURES FOR MINORITY PROCUREMENT

Based on data obtained from JLARC's analysis of the Department of Accounts Commonwealth Accounting and Reporting System, State expenditures to minority firms account for a higher dollar value than previously reported. These expenditures represent a lower proportion of state spending than was previously thought, however.

Based on JLARC's review of FY 1995 data, the Commonwealth paid 1,235 minority firms more than \$108 million for goods and services. These expenditures represented over 80,000 transactions ranging in value from a few dollars to hundreds of thousands of dollars. JLARC's review shows \$83.4 million in minority expenditures for FY 1994. This compares to \$70 million in minority expenditures reported by State agencies to DMBE in FY 1994.

The \$108 million in State expenditures to minority firms represents 3.9 percent of a FY 1995 expenditure base of \$2.78 billion. The JLARC 1994 amount of \$83.4 million represents 3.5 percent of a base of \$2.4 billion. By contrast, the DMBE 1994 total of \$70 million represents 4.6 percent of an expenditure base of \$1.5 billion. A DMBE report for FY 1995 has not been prepared.

Most (55 percent) FY 1995 minority expenditures fell into five "object codes" or categories of expenditures (Table 1). The largest of these was the purchase of "Computer Peripheral Equipment," which accounted for \$22 million in payments to minority firms. This amount represents 32 percent of the State total of \$70 million spent on this category of goods. The second largest category was "Highway Repair and Maintenance," which accounted for \$16 million in payments to minority firms, or 5.5 percent of a \$302 million dollar base.

Table 1

**Five Largest Categories of Expenditures
to Minority Businesses
(FY 1995)**

<i>Area of Expenditure</i>	<i>Minority Expenditures</i>	<i>Total¹ Expenditures</i>	<i>Percent of Total</i>
Computer Peripheral Equipment	\$22,277,653	\$70,143,950	31.8
Highway Repair and Maintenance	16,494,728	302,082,532	5.5
Computer Processor Equipment	10,274,368	33,894,166	30.3
Construction, Highways	6,465,937	466,971,062	1.4
Computer Hardware Maintenance	4,215,615	24,631,099	17.1
Total	\$59,728,301	\$897,722,809	6.7

¹Total represents expenditures of all State agencies in each category.

Source: JLARC staff analysis of Department of Accounts CARS data.

Five agencies account for over one-half (52 percent) of State expenditures to minority-owned businesses (Table 2). By far the largest is the Virginia Department of Transportation, which spent \$31.6 million or 2.8 percent of the expenditure base on minority-provided goods and services. This chapter will describe how these figures were obtained and compiled, and will analyze State expenditures to minority firms from three perspectives: State totals, secretarial and branch areas, and by agency.

To calculate State payments to minority businesses, JLARC staff conducted a computer analysis of records from the Commonwealth Accounting and Reporting System (CARS) for FY 1994 and FY 1995. This analysis matched vendor identification numbers with transactions involving 140 expenditure object codes representing \$2,783,537,829 in FY 1995 expenditures. A complete list of the 140 object codes and related expenditures

Table 2

**Agencies With the Largest Expenditures
to Minority-Owned Businesses
(FY 1995)**

<i>Agency</i>	<i>Amount</i>	<i>Percent of Agency's Base¹</i>
Virginia Department of Transportation	\$31,643,352	2.8
University of Virginia	7,395,046	3.2
Department of Social Services	6,175,071	22.0
Virginia Community College System	5,559,758	7.7
Lottery Department	5,377,960	10.0

¹The agency base is the total dollar value of transactions for the 140 object codes selected for review.

Source: JLARC staff analysis of Department of Account's CARS data.

is provided in Appendix C. Payments were made to minority firms in all but nine of these object codes. The nine object codes with no minority expenditures comprised only \$5.4 million of the \$2.78 billion base for FY 1995. The nine object codes were not removed from the analysis because there is no reason to think that minority firms would not be eligible to compete for such business. JLARC eliminated object codes such as State employee salaries (Personal Services, 1100), for which private sector businesses would normally not be eligible payees. (In addition, JLARC eliminated five object codes in the area of medical services because an adequate corresponding vendor database was not available. A list of eliminated object codes is provided in Appendix D).

Against this \$2.78 billion base of expenditures, JLARC matched federal identification numbers (FINs) of known minority businesses. The FIN is a unique identifier that enabled accurate matching of agency transactions with minority-owned businesses. While FINs were not available for all businesses, over 99 percent of the 1,920,465 transactions captured by the JLARC analysis included this variable. Thus, this methodology can be expected to capture the vast majority of transactions, provided there are sufficient minority firms to match transactions against. Several other methodological issues also merit discussion.

When calculating State expenditures to minority businesses, certain definitional issues and data limitations must be acknowledged. Definitions of minority businesses can vary, and the true number of minority businesses is not known. In theory, the most accurate source of minority businesses should be the certification records of the Department of Minority Business Enterprises (DMBE) which is charged by statute with receiving systematically-collected data from State agencies for a report by the Director of DMBE to the Governor (§ 2.1-64.37-38). As of July 1, 1995 DMBE had certified 1,752 minority businesses. This number substantially under-represents the number of minority-owned businesses doing work with the State, however, and DMBE's own

reports of expenditures to minority businesses have typically included whatever data is reported by State agencies. There are many reasons for the under-representation of minority businesses in certification records, including:

- Until 1994, certification was a relatively time-consuming and cumbersome process for minority-owned businesses.
- Out-of-state minority businesses receive State payments but are less likely to be on the State list of certified minority business enterprises.
- Minority businesses have little reason to seek certification, as the State does not offer minority businesses advantages for becoming certified, such as preference or set-aside programs.
- Most of the State's 29,555 minority firms (as estimated by the U.S. Department of Commerce 1987 Economic Census) are very small and are unlikely to seek either business with or certification by the State.
- Some minority businesses do not want to become certified, either because they want to compete on a business basis only, or because in some cases they may be wary of potential adverse consequences of being identified as a minority business.
- DMBE has not expanded its list of minority firms to include those registered or certified by other State agencies or by private certification entities.

Some of these issues cannot be addressed. The State should not compel certifications, for example. However, steps can be taken to improve the database. Recognizing the limits of the DMBE certification database, JLARC acquired databases of minority vendors from a number of public and private sources. The certification records of VDOT and registration records of the Department of General Services were acquired by JLARC and added to the DMBE database. Given the self-certification nature of DMBE's current process, these sources can be considered comparably accurate to DMBE's list of certified firms. In addition, JLARC acquired certification records from the Tidewater Regional Minority Purchasing Council and the Virginia Minority Regional Supplier Development Council, which have rigorous certification standards. Firms from these sources were added to the DMBE-certified list. This expanded list is referred to in this report as "registered" firms. These sources, added to DMBE's certified list, yielded a total of 4,079 minority firms.

The minority business list was further expanded by performing a file review at DMBE and extracting additional minority firms from agency reports. As noted earlier, reports to DMBE include hundreds of non-certified minority businesses. Subsequent JLARC follow-up with larger agencies yielded additional sources of minority-owned businesses. Minority firms receiving State payments of over \$1,000 were added, bringing the database to a total of 5,806 minority firms. After purging the database of errors and firms without federal identification numbers, the database consisted of three sets (1)

1,747 DMBE-certified minority firms, (2) 3,475 firms classified as “registered” firms, and (3) a “total” of 4,830. The sets are not exclusive. The federal identification numbers of these firms were matched with 1,920,465 agency vendor transactions for 140 object codes for FY 1995 payments to vendors totaling \$2,783,537,829. A similar process was followed for FY 1994.

As expected, the total list of firms identified the largest number of transactions (80,698) involving minority firms and the largest dollar value, \$108,256,489, or 3.9 percent of the base. By comparison (Table 3), certified businesses accounted for \$55,131,664 million of the total, or 2.0 percent of the base, and registered businesses accounted for \$76,345,251, or 2.7 percent of the FY 1995 base. As earlier noted, DMBE’s reports of agency procurement tend to include any dollar value reported by State agencies, not just certified firms. The difference between JLARC and DMBE figures, therefore, cannot be attributed solely to the inclusion of non-certified firms. After analyzing the data, JLARC staff concluded that the figures associated with “total” minority firms were most accurate. The linking of CARS transaction data with the more inclusive “total” list of minority firms best captures the level of minority participation. Consequently, the subsequent presentation of data in this report will focus on amounts produced by matching agency CARS transactions with the total list of minority businesses.

While the numbers presented in this report are substantial, there is reason to believe that even they do not fully capture State payments to minority-owned businesses. All of the reasons cited for low certification numbers can be applied to more general

Table 3

**Statewide Totals for Agency Payments to
Minority Businesses (FY 1995)**

<i>Minority Firm Source</i>	<i>Number of Firms</i>	<i>State Payments to Firms</i>	<i>Percent of Base*</i>
DMBE-Certified ¹	1,747	\$55,131,664	2.0
“Registered” ²	3,475	\$76,345,251	2.7
“Total” ³	4,830	\$108,256,490	3.9

¹Minority firms certified by DMBE with valid federal identification number.

²“Registered” includes DMBE-certified firms, plus firms registered or certified by VDOT, DGS, DIT, VRMSDC, and TRMPC, with valid federal identification numbers.

³“Total” includes DMBE-certified, other “registered” firms and minority firms reported receiving over \$1,000 on agency procurement reports for which valid federal identification numbers were available.

*Base equals \$2,783,537,829 in vendor payments for 140 object codes.

Source: JLARC staff analysis of Department of Accounts CARS data.

problems of identifying minority firms: absence of incentives, past problems with certification, reluctance of firms to register, etc. In addition, many State payments are made to majority “prime contractors,” which in turn may pay minority “second tier” subcontractors. JLARC’s CARS analysis would not capture such second tier payments, which could be substantial for an agency such as VDOT where prime contractors are encouraged to use minority subcontractors. Similar situations were observed for other agencies as the following case study shows.

The Virginia State University Report of Minority Business Activity, contained \$615,949 in expenditures to minority-owned businesses, for firms receiving more than \$1,000 in payments. Of that total amount, vendor identification numbers were unavailable for eight firms which accounted for \$330,807 or 54% of all reported expenditures. However, these expenditures were made to “second tier” vendors and subcontractors. As a result, Virginia State University did not have records containing the federal identification numbers for these firms. Further, these firms may have been paid directly by the prime contractor, which was paid by the State. Consequently, the University’s total amount of expenditures to minority-owned businesses will be understated.

Because second tier payments to minority contractors could not be systematically accounted for, the numbers in this report only reflect those expenditures captured in the analysis of CARS records.

State expenditures to minority firms in FY 1994 tended to follow the same general pattern as FY 1995. However, both the base and overall expenditure amounts are somewhat less for FY 1994. In FY 1994, certified firms received \$39.7 million or 1.7 percent of the \$2.37 billion base. “Registered” firms received \$56.8 million, or 2.4 percent of the 1994 base. Total minority firms received \$83.4 million, or 3.5 percent of the 1994 base. Because of the overall comparability of these numbers to FY 1995, the remainder of this report will focus primarily on FY 1995.

Minority Participation in Key Categories of State Spending

While total State spending is indicative of the magnitude of minority participation, an analysis of the categories of spending may ultimately be more useful in assessing minority participation. Although this study did not assess the labor market availability of minority businesses in the 140 categories analyzed, it could be argued that minority businesses are under-represented in categories in which State expenditures to minorities are minimal. As shown in Table 4, in many of the 20 categories with the highest total State spending, identified minority firms received a relatively small proportion of these expenditures. In eight of the top twenty categories, identified minority-owned businesses received less than one percent of all State spending. In nine categories, minority-owned businesses received between one and five percent of State business. In three categories, minority vendors received five percent or more. Complete data in a similar format for all 140 object codes is provided in Appendix E.

Table 4

**FY 1995 Statewide Expenditures
to Minority-Owned Business
As a Percentage of Top 20 Total Expenditures**

<i>Area of Expenditure (Code)</i>	<i>Expenditures</i>	<i>MBE Expenditures</i>	<i>Percent of Total</i>
Construction, Highways (2323)	\$466,971,062	\$6,465,937	1.38
Highway Repair and Maintenance (1255)	302,082,532	16,494,728	5.46
Construction, Buildings (2322)	150,040,344	1,712,635	1.14
Construction, Bridges (2321)	123,669,718	109,198	0.09
Medical and Dental Supplies (1342)	115,890,040	1,026,929	0.89
Architectural and Engi-neering Services (1261)	104,625,738	2,249,974	2.15
Skilled Services (1268)	96,620,602	3,748,394	3.88
Merchandise (1334)	96,021,723	3,163,806	3.29
Food and Dietary Supplies (1362)	85,096,124	159,885	0.19
Computer Peripheral Equipment (2211)	70,143,950	22,277,653	31.76
Building Rentals (1535)	68,682,407	178,977	0.26
Telecommunications Services (Non-State) (1217)	67,739,939	79,376	0.12
Construction, Building Improvements (2328)	66,457,322	578,800	0.87
Equipment Rentals (1534)	44,796,025	612,676	1.37
Motor Vehicle Equipment (2254)	43,034,202	220,259	0.51
Management Services (1244)	36,715,639	877,272	2.39
Computer Processor Equipment (2212)	33,894,166	10,274,368	30.31
Public Information and Public Relations (1246)	31,004,946	650,966	2.10
Laboratory Supplies (1341)	30,632,160	806,901	2.63
Attorney Services (1243)	29,528,957	57,203	0.19

Source: JLARC staff analysis of Department of Accounts CARS data.

The largest minority share of State expenditures for the object codes was 32 percent, for the category “computer peripheral equipment” (object code 2211). Indeed, for the five object codes for which minority businesses accounted for over 20 percent of State expenditures, four were in the computer area (Table 5). Most of the spending in the area is done through one large firm (Winn Laboratories), which accounts for more than \$20 million in State business. The only non-computer related object code in this category was custodial services (object code 1251), for which minority firms received \$3,684,378 or 20 percent of the State’s business.

Table 5

**Areas Where Expenditures to Minority Firms
Comprise Over 20 Percent of State Total**

<i>Code</i>	<i>Description</i>	<i>Amounts Paid to Minority Firms</i>	<i>Percent of Total</i>
2211	Computer Peripheral Equipment	\$22,277,652	32
2212	Computer Processor Equipment	10,274,368	30
1373	Computer Operating Supplies	2,176,933	24
2218	Computer Equipment Improvements	1,503,187	22
1251	Custodial Services	3,684,378	20

Source: JLARC staff analysis of Department of Accounts CARS data.

The top 20 categories of minority expenditures in terms of dollar value are shown in Table 6. These 20 categories account for 84 percent of all expenditures to identified minority firms. Eighteen areas have spending exceeding \$1 million in a variety of categories. A wide array of goods and services are represented, suggesting that the availability of minority firms may be more extensive than some agencies may realize. Further, the great majority of these expenditures goes to firms that are located in Virginia. For FY 1995, minority firms located in Virginia accounted for a total of 61,085 transactions (76 percent of total transactions) totaling \$79.2 million (73 percent of total minority expenditures).

EXPENDITURES BY SECRETARIAL AREA

In the past, the DMBE has compiled reports on minority procurement by Secretarial area. DMBE’s report of expenditures by secretarial area were based upon a compilation of minority business procurement reports compiled and submitted by State agencies to the department. Hence, the information contained in the report on minority procurement by secretarial area compiled by the DMBE is subject to the same limitations mentioned earlier in this chapter.

Table 6

Top 20 Categories of Expenditures to Minority-Owned Businesses

<i>Area of Expenditure (Code)</i>	<i>MBE Expenditures</i>	<i>Total Expenditures</i>	<i>Percent of Total</i>
Computer Peripheral Equipment (2211)	\$22,277,653	\$70,143,950	31.76
Highway Repair and Maintenance (1255)	16,494,728	302,082,532	5.46
Computer Processor Equipment (2212)	10,274,368	33,894,166	30.31
Construction, Highways (2323)	6,465,937	466,971,062	1.38
Computer Hardware Maintenance (1274)	4,215,615	24,631,099	17.11
Skilled Services (1268)	3,748,394	96,620,602	3.88
Custodial Services (1251)	3,684,378	18,676,559	19.73
Office Supplies (1312)	3,678,973	19,789,042	18.59
Printing Services (1215)	3,276,190	24,677,497	13.28
Merchandise (1334)	3,163,806	96,021,723	3.29
Architectural and Engi-neering Services(1261)	2,249,974	104,625,738	2.15
Computer Operating Supplies (1373)	2,176,933	8,932,794	24.37
Construction, Buildings (2322)	1,712,635	150,040,344	1.14
Computer Equipment Improvements (2218)	1,503,187	6,719,890	22.37
Computer Software Costs (1279)	1,362,603	21,302,789	6.40
Plant Repair and Maint. Services (1257)	1,111,968	24,911,334	4.46
Medical and Dental Supplies (1342)	1,026,929	115,890,040	0.89
Media Services (1248)	1,021,477	12,013,602	8.50
Photographic Supplies (1377)	943,364	4,925,727	19.15
Equipment Repair and Maint. Services (1253)	\$935,073	\$27,121,587	3.45

Source: JLARC staff analysis of Department of Accounts CARS data.

However, this level of data aggregation is useful because it is likely that some of the deviations and extreme values seen at the individual agency level could be expected to moderate or cancel out. Consequently, the use of aggregated data provides a useful overview of the State's total procurement and its expenditures to minority-owned businesses. Using the Commonwealth Accounting and Reporting System, JLARC calculated expenditure totals for both FY 1994 and FY 1995 for the legislative, executive and judicial branches and the eight secretarial areas.

As noted previously, at the individual agency level, overcounting or undercounting could disproportionately affect the percentage of minority expenditures. Such an effect would tend to be mitigated by the aggregation of agencies at the branch and Secretarial levels. Table 7 shows the FY 1995 data collected by JLARC at the branch levels. Table 8 shows the FY 1995 data collected by JLARC aggregated at the Secretarial level. Data compiled by secretariat for FY 1994 yielded similar results to that of 1995. For example, from FY 1994 to FY 1995 six of the eight secretariats exhibited no change in the percentage of minority procurement. In addition, the total percentage of minority procurement for all secretariats minimally increased from 3.40 percent to 3.76 percent. The base of expenditures between the two years is similarly proportional. Procurement across the secretariats for FY 1994 accounted for \$2,253,397,925 in total expenditures and \$76,294,550 in expenditures to minority-owned businesses. The total expenditures by secretariat for FY 1995 amounted to \$2,661,559,240 and total minority procurement accounted for \$99,896,441.

Table 7

Expenditures by Branch of Government: FY 1995

<i>Branch</i>	<i>Total Procurement</i>	<i>Minority Procurement</i>	<i>Percentage of Minority Procurement</i>
Executive	\$2,663,644,976	\$100,199,773	3.76
Legislative	5,371,012	894,977	16.66
Judicial	45,230,696	845,254	1.86
Independent Agencies	69,291,144	6,316,485	9.11
Total	\$2,783,537,828	\$108,256,489	3.88

Source: JLARC staff analysis of Department of Accounts CARS data.

AGENCY-LEVEL SPENDING

Every major State agency procured some goods and services from minority-owned businesses in FY 1995. As shown in Table 9, 23 State agencies spent more than \$1 million each with identified minority businesses. Conversely, some agencies spent

Table 8**Expenditures by Secretariat: FY 1995**

<i>Secretariat</i>	<i>Total Procurement</i>	<i>Minority Procurement</i>	<i>Percentage of Minority Procurement</i>
Administration	\$117,019,786	\$3,244,292	2.77
Commerce and Trade	58,171,472	3,012,553	5.17
Education	862,662,050	37,946,954	4.39
Finance	13,044,449	766,504	5.88
Health and Human Resources	239,060,488	12,686,689	5.30
Natural Resources	40,593,075	2,860,854	7.04
Public Safety	159,513,026	6,316,844	3.96
Transportation	1,171,494,894	33,061,748	2.82
Total¹	\$2,661,559,240	\$99,896,438	3.750

¹Total expenditures by secretariat do not include payments made to minority firms by the executive offices.

Source: JLARC staff analysis of Department of Accounts CARS data.

very little with minority firms. Information on 77 major agencies can be found in Appendix F.

As noted earlier in this report, it was impossible to identify all minority firms doing business with the State. It is probable, therefore, that some expenditures are missing. Such omissions could particularly affect smaller agencies where the exclusion (or inclusion) of payments to even a few minority firms could disproportionately affect the agencies' totals.

As indicated earlier, a statewide assessment of the availability of minority businesses in specific areas was not conducted. For example, much of DIT's \$63.9 million base is with major mainframe computer makers or telecommunications companies. The relatively low percent of DIT expenditures with minority firms (\$516,431 or .81 percent of its base) could be a result of limited availability of minority businesses in this field, coupled with the impact of economies of scale and the State's low bid policy.

To provide more detailed information on individual agencies and factors affecting them, data are presented in Appendix G on the top ten agencies in terms of dollar volume of minority spending. These reviews provide more specific information on individual agency purchases, including their major categories of spending. An example of such a review — for the Department of Corrections — is provided in Exhibit 1.

As would be expected, agencies with the largest expenditure base are generally those with the largest minority expenditures. VDOT, with the largest expenditure base

Exhibit 1
Expenditures for the Department of Corrections
on Minority Businesses

The Department of Corrections is responsible for the secure confinement of approximately 23,000 felons in Virginia prisons, field units, and work release centers. For the purposes of this review, those entities are included, along with the central office, in the data presented in this report.

In FY 1995, the DOC spent \$2,844,379 with minority businesses, or 2.9 percent of a \$97 million base. In FY 1994, the department spent \$2.2 million, or 3.7 percent of a \$60 million base. By comparison, DOC reported FY 1994 minority expenditures of \$1.9 million from a \$58 million base.

DOC has a written policy regarding minority procurement, as required by statute. This policy directs DOC purchasing officers to use DMBE's and DGS's lists of minority businesses. It also directs purchasing officers to "notify DMBE whenever a minority not listed with their office is utilized." In addition, DOC requires purchasing officers to advertise solicitations over \$5,000 in minority-owned newspapers.

The department indicated that size is a barrier to full participation by minority businesses. "Minority firms are often small and lack the financial resources to prepare formal written proposals that can successfully compete for large state contracts."

DOC's procurement manager indicated that the department has been using a CARS data search similar to that used in this report. He indicated that preparation of such reports at the State level would save time and money.

Largest MBE Expenditures/Percent of Agency Total			
Area of Expenditure DOC (701)	MBE Expenditure	Total Expenditure	Percent of Total
Apparel Supplies (1311)	\$252,459	\$892,903	28.00%
Office Supplies (1312)	\$206,359	\$860,548	24.00%
Manufacturing Supplies (1333)	\$189,843	\$13,658,499	1.40%
Coal (1321)	\$165,555	\$999,877	17.00%
Law Enforcement Supplies (1376)	\$154,316	\$539,328	29.00%
Construction, Building Improvements (2328)	\$143,072	\$4,652,746	3.10%
Food and Dietary Supplies (1362)	\$140,069	\$4,786,880	2.90%
Computer Peripheral Equipment (2211)	\$115,186	\$1,105,340	10.00%
Computer Software Costs (1279)	\$110,432	\$273,094	40.00%
Photographic Supplies (1377)	\$105,546	\$155,675	68.00%

Source: JLARC Staff Analysis of FY 1995 DOA Records

Largest Agency Expenditures/MBE Percent			
Area of Expenditure DOC (701)	Total Expenditure	MBE Expenditure	Percent of Total
Construction, Buildings (2322)	\$20,090,253	\$0	0.00%
Manufacturing Supplies (1333)	\$13,658,499	\$189,843	1.40%
Merchandise (1334)	\$6,485,091	\$18,474	0.28%
Food and Dietary Supplies (1362)	\$4,786,880	\$140,069	2.80%
Construction, Building Improvements (2328)	\$4,652,746	\$143,072	3.10%
Building Rentals (1535)	\$4,274,920	\$0	0.00%
Mechanical Repair and Maintenance (1354)	\$3,002,955	\$70,688	2.40%
Medical and Dental Supplies (1342)	\$1,857,820	\$73,996	4.00%
Building Repair and Maintenance (1351)	\$1,651,531	\$31,700	1.90%
Architectural and Engineering (1261)	\$1,617,161	\$67,500	4.20%

Source: JLARC Staff Analysis of FY 1995 DOA Records

MBE = Minority Business Enterprise

Table 9

Agency Expenditures to Minority-Owned Businesses (FY 1995)

<i>Name</i>	<i>Total Expenditures</i>	<i>Minority Expenditures</i>	<i>Percent of Total</i>
Department of Transportation	\$1,146,557,427	\$31,643,351	2.76%
University of Virginia	234,312,981	7,395,045	3.16
Department of Social Services	28,216,265	6,175,071	21.88
Virginia Community College System	72,250,695	5,559,757	7.70
Lottery Department	53,443,726	5,377,960	10.06
Virginia Commonwealth University	188,314,407	4,638,568	2.46
Health Department	105,045,087	2,912,250	2.77
Corrections	97,354,738	2,844,379	2.92
Norfolk State University	14,329,373	2,832,029	19.76
VPISU	102,516,876	2,625,773	2.56
George Mason University	57,454,410	2,561,128	4.46
Department of General Services	50,867,184	2,500,467	4.92
James Madison University	39,263,027	2,148,437	5.47
Old Dominion University	16,009,831	1,604,252	10.02
Mental Health Mental Retardation Substance Abuse Services	58,664,417	1,549,926	2.64
Virginia State University	14,888,063	1,547,884	10.40
Department of Environmental Quality	17,069,405	1,426,400	8.36
Department Motor Vehicles	19,924,773	1,341,623	6.73
Virginia Port Authority	11,706,998	1,218,099	10.40
William and Mary	34,004,613	1,093,753	3.22
Virginia Museum Fine Arts	2,976,583	1,075,144	36.12
Library of Virginia	2,518,641	1,055,817	41.92
Other*	13,861,838	1,627,781	11.74

*Other represents 41 sources of expenditures, generally small agencies, combined into a single unit.

Source: JLARC staff analysis of Department of Accounts CARS data.

— \$1.15 billion — spends the most with minority firms: \$31.6 million, or 2.8 percent of that base. The University of Virginia (including UVAH and Clinch Valley) has the second largest expenditure base — \$234 million — and spends the next largest amount with minority firms, \$7.4 million, or 3.2 percent of the base.

Nine agencies with over \$1 million in expenditures to minority firms spent 10 percent or more of their base with minority businesses. (These agencies also appear in Table 9). The largest of this group by percentile are the Library of Virginia (42 percent), the Virginia Museum of Fine Arts (36 percent), and the Department of Social Services (22 percent). All of these agencies are based in the City of Richmond, where there are many minority-owned businesses. The other five agencies in the \$1 million/10 percent category are also located in areas with access to substantial minority business communities: Norfolk State University (20 percent), Virginia State University (10 percent), Old Dominion University (10 percent), the Virginia Port Authority (10 percent), and the Lottery (10 percent). (According to the 1987 Economic Census, the Richmond/Petersburg MSA had 4,879 minority-owned businesses, of which 1,149 had paid employees. The Norfolk/Virginia Beach/Newport News MSA had 7,089 minority-owned businesses, of which 1,566 had paid employees). In addition, the 41 agencies clustered into the “Other” category spent \$1.5 million, or 13 percent, of their combined base of \$12.3 million with minority businesses.

THE NEED FOR AN IMPROVED DATABASE AND METHODOLOGY FOR ASSESSING MINORITY PROCUREMENT

The fact that many agencies are able to successfully identify minority businesses would seem to indicate the general availability of minority businesses to provide goods and services to the State. However, 37 of 126 State agencies surveyed by JLARC said they had trouble locating minority businesses. Some of these problems may be due to the relatively small number of firms on DMBE’s list and on the accuracy and currency of this list. Several agencies indicated that substantial effort is required by individual agencies to update the list provided by DMBE.

One agency in Richmond reported experiencing problems when using DMBE’s list of certified firms for solicitation purposes. An agency representative described a solicitation effort earlier in the day where one phone call solicitation had yielded (1) a child answering the phone, (2) an answering machine, (3) an out-of-service number, and (4) no answer to the call. Such experiences are not uncommon, he said, adding that the agency itself spends a lot of time attempting to verify that firms on the list are still in business. The agency recommended that “one single minority database should be maintained and be electronically available in a real time mode to all agencies.”

Further evidence of the need to expand and improve the accuracy of DMBE’s list can be seen in the number of DMBE-certified matches. Only 235 of the 1,235 minority firms (19

percent) matched by CARS transactions came from the DMBE-certified database. These appeared to be the larger, better-known firms, accounting for \$55 million of the \$108 million expenditures.

The director of DMBE, in interviews with JLARC staff, expressed an interest both in the expanded database and in the methodology used in this report. Use of this methodology, along with an improved database of minority-owned businesses, would produce more accurate reports and save time and effort at individual agencies. As earlier noted, JLARC's use of other State databases almost tripled DMBE's list of minority firms and produced more than 80 percent of the CARS matches. Further refinements to the data base are still possible. The University of Virginia, for example, has its own database of over 1,000 minority firms. Other State agencies have similar lists. Consolidation of all these lists in an automated format would greatly enhance the ability of State agencies to locate minority businesses, particularly in regions where agencies reported difficulties. In addition, consolidation of the minority lists will provide more accurate data and information concerning State procurement activities with minority-owned businesses.

Similarly, the reporting process in its current form has often resulted in inaccurate reporting, duplication of effort and inefficiency. Changing the reporting process to facilitate the transfer of CARS data about State agencies to the DMBE in an automated form rather than in the present manual or hard copy formats could significantly reduce data entry and processing workloads at state agencies and DMBE. Furthermore, compiling and submitting the minority procurement reports in an automated manner would result in more timely and accurate reporting of that data.

***Recommendation (1):* The General Assembly may wish to amend § 2.1-64.37-38 of the *Code of Virginia* to remove the responsibility for preparation of minority participation reports from State departments and agencies and transfer the responsibility to the Department of Minority Business Enterprise and the Department of Accounts. If enacted, the Department of Minority Business Enterprise and Department of Accounts should use a methodology similar to that used in this report to improve the accuracy and timeliness of reports of minority procurement.**

Changing reporting responsibilities and methodologies would address some of the problems currently experienced in the area of minority procurement. Statute currently calls for the director of DMBE to establish an interdepartmental board (§ 2.1-64.36 of the *Code*) to promote minority business activity. In theory, this board could coordinate the merger of minority business lists and improved reporting. However, this board has met infrequently, and the director of DMBE may not be in a position to ensure the full cooperation and coordination needed to influence activities across secretarial and departmental lines. An inter-agency task force might be better able to effect needed changes.

***Recommendation (2):* The Secretary of Administration should convene an inter-agency task force to assist the Department of Minority Business Enterprise in the modification of the reporting process. The task force should**

include, but not be limited to, representatives of the Offices of the Secretary of Administration, the Secretary of Commerce and Trade, the Secretary of Finance, the Department of Accounts, the Department of Minority Business Enterprise, the Virginia Department of Transportation, the University of Virginia Office of Minority Procurement Programs, and a representative of the legislative and judicial branches. The task force should be chaired by a representative of one of the Secretariats. The task force should address issues of identifying and certifying minority businesses, the compilation and automation of lists, and other reporting issues. The task force should also prepare recommendations for statutory modifications related to these issues. (Further issues to be addressed by the task force are addressed in Chapter III recommendations.)

CONCLUSION

While minority-owned firms receive substantial business from the State, the overall proportion (3.9 percent) appears small compared to the State's minority population, which is 21.3 percent of the Commonwealth's population of persons over 16 years old. This comparison can be misleading, however, because minorities do not own businesses in proportion to their population. In addition, the Supreme Court has found that population percentage is not a legal basis for preference programs, where such programs do exist. The 1987 Department of Commerce Economic Census only identified 6,237 minority firms with paid employees, a number closer to the number of minority-owned firms identified during JLARC's study (5,806 — this number does include sole proprietorships, however). The percentage of minority-owned businesses in the State (9.9 percent in 1984) is somewhat more in line with the 3.9 percent level of participation. (Economic Census data from 1992 were not available at the time of this report.)

A number of explanations have been suggested to explain relatively low levels of minority participation for various categories of State contracts. Often cited is the explanation that the low bid policy of the State favors larger, longer-established firms that are typically not minority. It has also been suggested that majority firms traditionally doing business with the State have developed relationships and expertise that gives them an advantage. Some representatives of the minority business community have suggested that some agencies make only a half-hearted effort to solicit bids from minority businesses. To address some of these concerns, the State has adopted a number of policies and practices which it implements with mixed success. These issues are discussed in the next chapter.

III. Minority Business Participation in Virginia's Public Procurement Process

Minority firms rely on State agencies' implementation of minority business related policies in their efforts to compete for business with the State. State policies governing procurement of goods and nonprofessional services from minority-owned businesses are substantially the same as those policies governing procurement from all nongovernmental sources. Minority-owned businesses desiring to provide the State with goods and services are subject to the Virginia Public Procurement Act, as are all other businesses. The Commonwealth does not give minority firms preference over non-minority firms competing for business with the State. However, the State has established provisions to ensure that minority-owned businesses both have opportunities to participate in the State's procurement activities and are not discriminated against during the procurement process.

State agencies and institutions contracting goods and nonprofessional services from nongovernmental sources must abide by established policies and procedures found in the Virginia Public Procurement Act, the Virginia Fair Employment Contracting Act, and procurement guidelines provided by the Department of General Services' (DGS) Division of Purchases and Supply (DPS). None of the above-mentioned statutes or guidelines contain preferences, set-asides, or quotas for minority-owned businesses. However, various sections of the *Code of Virginia* prohibit discrimination on the basis of race, religion, color, sex, or national origin.

Furthermore, State agencies provide guidelines, assistance, and training in the area of minority-owned business participation in the State procurement process. These agency functions are designed to enhance the State's policy of contributing to the establishment, preservation, and strengthening of minority-owned businesses. The implementation of these functions, however, does not always meet the intent of State policy. Consequently, both State agencies and minority-owned firms have voiced concerns over the lack of effort on the part of State agencies with procurement oversight responsibilities in promoting the participation of minority-owned businesses in the State procurement process.

Enhanced cooperation between State agencies with minority-owned business oversight responsibilities is necessary to effect compliance with statutes governing the establishment, preservation, and strengthening of minority-owned businesses. In addition, State agencies with oversight responsibilities in public procurement activities should (1) incorporate review procedures for minority-procurement activity where this oversight is lacking, and (2) provide more complete, comprehensive, and reliable data on minority-owned business activity in State procurement. Moreover, the lack of comprehensive data on minority-owned business activity in an automated form appears to serve as a constraint to minority-owned business activity in the public procurement process.

Previous chapters have described State policies regarding anti-discrimination and levels of minority-owned business activity in State contracts. This chapter examines Virginia's public procurement policies as they relate to minority-owned business activity in the State procurement process, and the State's oversight mechanisms to promote compliance with those procedures and policies.

PUBLIC PROCUREMENT POLICIES IN VIRGINIA

In response to the absence of a comprehensive review of the Commonwealth's public procurement laws, the 1979 Session of the Virginia General Assembly adopted Senate Joint Resolution No. 148 which authorized a study of Virginia's procurement laws. The study concluded that Virginia's procurement statutes were "sprinkled throughout the *Code*, rather than located within one Title." Therefore, the study produced recommendations to establish a more cohesive and comprehensive public procurement policy.

Subsequently, the 1982 General Assembly created the Virginia Public Procurement Act in Chapter 7 of Title 11 of the *Code of Virginia*. The purpose of the Act is to establish comprehensive public policies pertaining to governmental procurement from nongovernmental sources. Section 11-35 of the *Code of Virginia* enunciates the Commonwealth's procurement policy:

To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner . . . [and] that all qualified vendors have access to public business . . . it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.

Promoting competition and acquiring goods and services from the lowest responsive and responsible bidder are emphasized in the Act. In addition, the Act prohibits discrimination and promotes the inclusion of minority-owned businesses in the State procurement process. However, not all public procurement policies have guidelines in the area of minority-owned business participation.

Statutory Provisions Relating to Non-Discrimination and Minority Business Participation

The Virginia Public Procurement Act emphasizes competition. The Act specifies that unless exempted elsewhere, transactions entered into by public agencies and institutions for the acquisition of goods, services, construction, and insurance must be obtained through a competitive process. Section 11-53 of the Act, specifically provides that “unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted” The creation of a policy concerning the acceptance of the lowest responsible bidder emphasizes the intention of the Act. Responsible bidders, persons with the capability to “perform fully the contract requirements and the moral and business integrity and reliability which assure good faith performance,” offering the lowest bid, assist public bodies in obtaining high quality goods and services at reasonable prices.

In the State’s effort to seek the lowest responsible bidder, minority-owned businesses do not receive any consideration on the basis of being minority-owned firms. Therefore, a minority-owned business must be classified as a responsible bidder and will receive State contracts only when the firm offers the lowest price. This is standard in the majority of procurement activities.

Although State procurement policy emphasizes competition resulting in the selection of the lowest responsible bid and does not give minority-owned businesses any preference in this selection process, elements of State policy exist to ensure that minority-owned firms are not discriminated against in the process. Under current Virginia law, provisions exist prohibiting both discrimination and preference in awarding contracts to minority businesses. Agencies are required to solicit bids from minority companies, but the award of contracts is generally done on the basis of a low bid. Furthermore, the Virginia Public Procurement Act sets out: (1) the prohibition of discrimination by a public body; (2) the establishment of programs to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions; and (3) the prohibition of discrimination by a contractor.

Section 11-44 of the Public Procurement Act requires that “no public body shall discriminate because of the race, religion, color, sex, or national origin of the bidder or offeror.” In 1984, the section was amended to include the following phrase: “Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Minority Business Enterprise.”

In addition, § 11-48 of the Act states that “all public bodies shall establish programs consistent with all provisions of [the Virginia Public Procurement Act] to facilitate the participation of the small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing , and shall include cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies.” In 1984, the language in this section was changed from “may” to “shall.” That same year, a section

was added requiring State agencies to submit annual progress reports on minority business procurement to the Department of Minority Business Enterprise (DMBE).

Although public bodies are required to help facilitate the participation of minority-owned businesses in public procurement, agencies are not required to award contracts based on this identification. Moreover, in order to receive awards with the State, solicited minority-owned businesses must prevail in the regular competitive procurement process.

The Act also prohibits employment discrimination by a contractor. Section 11-51 of the Act requires that during the performance of a contract, "the contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification." By statute, in all solicitations or advertisements for employees, the contractor is required to state that he is an "equal opportunity employer." Finally, the contractor must include the aforementioned provisions in every subcontract entered into over \$10,000.

In addition to the Virginia Public Procurement Act, references to anti-discrimination in contracting are available in additional sections of the *Code*. Sections 2.1-374 through 2.1-376 establish the Virginia Fair Employment Contracting Act. The Virginia Fair Employment Contracting Act, enacted in 1975, requires that a contractor not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. In addition, the Act states that:

Nothing contained in the [Virginia Fair Employment Contracting Act] shall be deemed to empower any agency to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth.

In 1980, the Act was amended to prohibit discrimination in the awarding of State contracts. Section 2.1-376.1 of the Virginia Fair Employment Contracting Act states that "in the awarding of contracts, no contracting agencies shall discriminate because of race, religion, color, sex, or national origin."

Procurement Act Provisions Allow Some Flexibility

The Virginia Public Procurement Act defines various types of public procurement beyond the simple acceptance of low bid. Section 11-41 of the *Code of Virginia*

outlines the various methods of procurement available to State agencies. All public contracts with nongovernmental contractors for goods, services, insurance, or construction must be awarded on the basis of competitive bidding or competitive negotiation, unless otherwise authorized by law. Authorizations for competitive sealed bidding, competitive negotiation, small purchase procedures, sole source procurements, and emergency procurements are also allowed under the Virginia Public Procurement Act.

Competitive Sealed Bidding. Competitive sealed bidding is the preferred method of public procurement in the Commonwealth when acquiring goods or nonprofessional services estimated over \$15,000. This type of bidding is defined as “the offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.” Competitive sealed bidding includes the issuance of a written Invitation to Bid (IFB), public notice of the IFB, public announcement of all bids received, evaluation of bids, and award to the lowest responsive and responsible bidder.

Minority-owned businesses do not receive preferential treatment in the sealed bidding process. However, State procurement policies direct agencies to include businesses selected from a list made available by DMBE when soliciting bids directly from potential contractors. The intent of this policy is to encourage minority-owned business participation in State bidding opportunities. However, limitations in data and limited oversight impede full compliance with this policy. These issues will be discussed in greater detail in the next section of this chapter.

Competitive Negotiation. Competitive negotiation is used if competitive sealed bidding is deemed either not practicable or not fiscally advantageous by the procuring public body. In a competitive negotiation process, a written statement must explain why competitive bidding is not practicable or fiscally advantageous. In this case, a Request for Proposal (RFP) is issued stating what is to be procured, public notice of the RFP is established, and there is an engagement in individual discussions with qualified offerors. Negotiations are continued with meritorious offerors, and a contract is awarded.

Minority-owned business participation in the competitive negotiation process is dependent on State agency inclusion of minority firms in the solicitation process. Procurement guidelines recommend that State agencies include a minimum number of minority firms based on the procurement amount and the adequacy of minority firm registration in the given commodity. Moreover, State policy for RFP procurements in excess of \$100,000 provides additional guidelines for minority-owned business participation.

Minority-Owned Business Solicitations and Memorandum on Procurements Over \$100,000. Section 2.1-442 of the *Code of Virginia* authorizes DGS and DPS to issue directives or memoranda on public procurement. In section 2.16(d) of the *Agency Procurement and Surplus Property Manual*, DPS exercises this authority. Section 2.16(d) provides guidance in compliance with the Secretary of Administration’s memorandum dated August 12, 1991.

This memorandum establishes guidelines for all procurements of goods, professional and nonprofessional services, construction, and insurance by competitive negotiation which exceed \$100,000 in value. The memorandum implements the policy of the Commonwealth to “contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities.” In this case, the directives of the memorandum are not optional; rather, they are requirements. Guidelines for implementation of the memorandum state that the offeror must submit three sets of data for small businesses and businesses owned by women and minorities. These sets of data are: (1) ownership, (2) utilization of such firms for the most recent 12 months, and (3) planned involvement of such firms on the current procurement.

In evaluating these proposals, DGS/DPS guidelines provide weights to be assigned to the offerors' past, current, and future efforts to utilize goods and services from such firms. The failure of an offeror to submit the required information will result in the removal of the offer from further consideration. A DPS staff member stated that he was not aware of any RFP which was tilted in the favor of and subsequently awarded to a firm based on the minority business provisions of this memorandum.

Small Purchase Procurements. Section 11-41F of the *Code of Virginia* permits public bodies to establish purchase procedures, if adopted in writing, that do not require sealed bids or competitive negotiation for single or term contracts not expected to exceed \$15,000 (\$30,000 for contracts for microcomputers and related peripheral equipment and services). Although small purchase procedures do not require sealed bids or competitive negotiation, these procedures should permit competition whenever practicable. Table 10 provides an overview of State procurement requirements and dollar limitations.

Single quotations are permissible in certain instances. For example, when the estimated costs of goods or nonprofessional services is less than \$2,000, purchases may be made with the receipt of one written or telephone quotation. However, DGS states that agencies should seek additional competition whenever there is reason to believe that the written or telephone quotation is neither fair nor reasonable.

In addition, the *Agency Procurement and Surplus Property Manual* requires State agencies and institutions to solicit at least three valid sources for purchases of goods or services between the single quote limit of \$2,000 and \$5,000. Moreover, small purchases between \$5,000 and the small purchase dollar threshold of \$15,000, whether sealed bids or unsealed proposals, require soliciting from at least four valid sources. In all agency purchases over \$15,000, a decision must be made whether to use competitive sealed bidding or competitive negotiation. In either case, solicitations from a minimum of six valid sources are required.

Staff at DPS have recognized that the possibility of confusion exists in the solicitation of bids for State procurement activity. As depicted in Table 10, some solicitations are required and others are recommended. The *Agency Procurement and Surplus Property Manual* provides guidelines for solicitations from bidders during

Table 10

State Procurement Requirements and Dollar Limits

<i>Method of Procurement</i> ¹	<i>Purchase Limits</i>	<i>Number of Solicitations Required</i>	<i>Minority Solicitation Recommendation</i> ²
Small Purchase	Less than \$2,000	Single Quote	Include when possible
	\$2,000 to \$5,000	Three Solicitations	Include minimum of two firms
	Between \$5,000 and \$15,000	Four Solicitations	Include minimum of four firms
Competitive Sealed Bidding (IFB)	Over \$15,000	Minimum of Six	Include minimum of four firms
Competitive Negotiation (RFP)	\$15,000 to \$100,000	Minimum of Six	Include minimum of four firms
Competitive Negotiation (RFP)	Over \$100,000	Minimum of Six	Include minimum of four firms and award points for past, current, and planned minority involvement

¹ Sole source procurements and low dollar purchases (single quote) are two of a number of exceptions to the competitive procurement process. Certain categories of emergency procurements are also exceptions to the competitive procurement process. A full list of exceptions is available in section 1.3(g) of the *Agency Procurement and Surplus Property Manual*.

² The *Agency Procurement and Surplus Property Manual* recommends these solicitations be expanded to include minority and/or women-owned businesses when there is adequate registration of minority and/or women-owned firms in the commodity solicited.

Source: JLARC staff analysis of *Agency Procurement and Surplus Property Manual*, September 1995, Department of General Services.

competitive bidding, competitive negotiation, and small purchases. In addition, guidelines for soliciting minority firms are also provided in the manual.

However, these guidelines are exhibited in separate sections of the manual, rather than displayed as they are interrelated. For example, Appendix K of the Procurement Manual provides a summary of policies related to purchase levels. However, while the number of overall solicitations is detailed, no mention of minority vendor solicitations is made. Consequently, a purchasing officer could interpret solicitations of small purchases between \$5,000 and \$15,000 to include four solicitations (none of which

having to be minority firms), four solicitations from minority firms only, or eight solicitations (four of which having to be from minority firms). Staff at DGS/DPS recognize the potential confusion and stated that this issue would be addressed. Subsequently, staff from the Procurement Review Section of DPS interpreted minority business solicitation recommendations to mean the expansion of solicitations to include minority firms to the required solicitations in high dollar solicitations.

Sole Source Procurements. DGS/DPS authorizes sole source procurements when “there is only one source practicably available for the goods or services required.” Sole source procurements must be accompanied by a written determination by the agency head, or his designee, documenting that only one source is practicably available. In addition, sole source procurements exceeding \$10,000 must be submitted to the Office of the Governor for review and approval. There are no minority-owned business solicitation requirements in sole source procurements.

Emergency Procurements. In its procurement manual, DGS/DPS defines an emergency as an occurrence of a serious and urgent nature that demands immediate action. In cases of emergencies, DGS/DPS outlines what pre-award action may be taken. Emergency purchases that are required to protect personal safety or property should be carried out immediately; however, the affected agency should attempt to negotiate a fair and reasonable price. In all other types of emergencies, competition should be sought to the extent practicable. There are no minority-owned business solicitation requirements in emergency purchases.

Although State procurement policies have been decentralized, all purchases are not established on the agency or institution level. In some instances DGS/DPS establishes term contracts, for which a source of supply is established for a specific period of time. DGS/DPS establishes these contracts in order to obtain more favorable prices through volume purchasing. In return, procurement lead time and administrative effort are reduced, and public bodies may issue purchase orders for any goods or services on the term contract available to the public body. When establishing State contracts, DGS/DPS solicits all registered vendors, under the commodity to be procured, from its bidders list. If minority vendors are on the list under the commodity to be procured, they will be automatically included in this process.

While the State's procurement process does not provide preference to minority businesses, DGS/DPS reported to JLARC that as of November 2, 1995, 19 minority-owned businesses held 26 of the 526 DGS/DPS term contracts for goods and services. JLARC staff attempted to contact these 19 firms for their assessment of doing business with the State. Of the 19 minority firms holding term contracts, 12 responded to a JLARC telephone survey, two firms did not wish to participate, three firms stated that their businesses were not minority-owned businesses, one firm did not have a current telephone listing, and one firm's contract had expired and should not have been placed on the list. (A follow-up of the three firms stating they were not minority-owned businesses revealed that the firms' minority designation was the result of DPS error rather than misrepresentation on the part of the firms.)

The minority firms holding DGS/DPS term contracts had mixed assessments of the fairness of the State's process for allowing participation of minority firms in its procurement of goods and services. Five of the 12 minority firms responding indicated the State's process allows for fair participation by minority businesses, two minority firms indicated the process did not allow fair participation, three firms were not sure, and two firms stated that in some cases the process did allow fair participation and in some cases it did not.

In general, the 12 firms responding indicated that their overall experience with the State in competing for State contracts was positive. Two firms indicated that their overall experience was very good, five firms thought their overall experience was good, three firms satisfactory, one firm poor, and one firm was not sure.

Provisions Seek to Ensure Accessibility

One of the issues implied in HJR 554 was the State's lack of knowledge on whether minority-owned businesses were aware of the business opportunities available with the State. JLARC staff identified potential limitations in obtaining this information. In an attempt to examine this issue, the problem of delineating between minority firms that were aware of State contracts, but choose not to participate, and the minority firms that were unaware of business opportunities with the State became evident. Additionally, State agencies with minority procurement oversight responsibilities were unable to provide JLARC staff with data on minority firms attempting to compete in the public procurement process. Therefore, it was difficult for JLARC to assess minority firms' awareness of business opportunities existing with the State.

JLARC staff did, however, assess the State's process of making public procurement opportunities open to firms that wanted to do business with the State. Because agencies and institutions are prohibited from discriminating against minority businesses in the public procurement process, these same provisions would apply to notifying minority-owned businesses of contract opportunities. Consequently, in its effort to ensure competition, the State provides opportunities for minority firms to be made aware of business possibilities with the State through a number of processes and programs.

Section 11-37 of the *Code of Virginia* requires agencies and institutions issuing an IFB or RFP to provide public notice "at least ten days prior to the date set for receipt" of the bid or proposal by posting the request or invitation in a designated public area normally used for posting public notices. The DGS/DPS *Agency Procurement and Surplus Property Manual*, section 2.26, requires all solicitations in excess of \$5,000 to be posted in "an area that is readily accessible to the general public." While an IFB in excess of \$5,000 also may be published in a newspaper of general circulation, an RFP estimated to be \$15,000 or more must be published "in a newspaper or newspapers of general circulation in the area in which the contract is to be performed." This requirement is in addition to public area posting requirements.

DGS/DPS also requires state agencies to publish current business opportunities in the *Virginia Business Opportunities (VBO)*. Agencies and institutions are required to advertise business opportunities in excess of established dollar limits in this centralized weekly publication. Additionally, a number of State agencies have programs which introduce minority-owned firms to the public procurement process and identify business opportunities available with the State.

MINORITY BUSINESS PROCUREMENT ACTIVITY OVERSIGHT

Although State agencies with primary minority business solicitation responsibilities provide various forms of assistance in the State procurement process, some oversight mechanisms are necessary to enhance compliance with existing statutes. Procurement policies direct DGS/DPS and DMBE to provide oversight in this process, and these agencies have some assistance, training, guidance, and review processes in place. However, some of these processes require additional oversight, coordination, or automation in order to ensure compliance with existing provisions of the *Code of Virginia*.

DGS/DPS Provides Oversight for Minority Business Procurement Activity

DGS/DPS provides assistance and training to State agencies procuring goods and services and to vendors competing for State contracts. Subsequently, DGS/DPS publishes the *Agency Procurement and Surplus Property Manual* which provides guidelines for agencies in the area of public procurement activity. The recently revised manual covers areas such as procurement authority and responsibility, general procurement policies, methods of procurement, and procurement planning. State agency and institution staff use the manual as a guide in numerous areas of public procurement. DGS/DPS publishes a similar manual for vendors who compete for contracts with the State.

In addition, DPS provides contract officer training to public employees in the area of procurement activity. Procurement training is provided for State employees, employees of political subdivisions, and other interested parties. The above-mentioned publications and training provide information on procurement types, selections, and limitations. Furthermore, DGS/DPS reviews the procurement activity of selected State agencies for compliance with State procurement policy. This oversight function is designed, among other things, to promote responsible procurement activity in State agencies.

Agency Procurement Manual. The *Agency Procurement and Surplus Property Manual* is published under the authority of § 2.1-442 of the *Code of Virginia*. Section 2.1-442 provides DPS with the authority to “make, alter, amend or repeal regulations relating to purchase of materials, supplies, equipment, nonprofessional services, and printing, . . . and specifically exempt purchases below a stated amount or particular agencies or specified materials, equipment, nonprofessional services, supplies and printing.” Through this manual, DPS sets forth policies and procedures to be followed

by State agencies and institutions in fulfilling procurement responsibilities within their delegated limits.

In addition, the procurement manual provides specific guidelines for purchase activities within specific dollar limitations. Agencies have certain delegated authority, but if the estimated purchase amount exceeds the authority, the procurement must be forwarded to the appropriate purchasing authority. In general, agencies have the delegated authority to purchase goods and printing up to \$5,000. Agencies have unlimited procurement authority in procuring services, subject to applicable laws and regulations.

Included in the procurement manual are provisions for the inclusion of minority-owned businesses in the procurement solicitation process. Statutory requirements for encouraging minority-owned business participation for competitive bidding and competitive negotiation are operationalized in section 2.16 of the procurement manual. State agencies are given guidelines on the number of minority firms that should be included in the solicitation process based on set dollar amounts. However, minority solicitation provisions are recommendations on what an agency should consider, rather than a statement of what an agency must consider.

Section 2.16(c) states that where there is adequate registration in a commodity, State agencies should:

- expand solicitations to include a minimum of two minority and/or women-owned firms for solicitations under \$5,000;
- expand solicitations to include a minimum of four minority and/or women-owned firms for solicitations over \$5,000; and
- provide for subcontracting with minority and women-owned firms for solicitations over \$5,000.

As noted earlier, these provisions are mentioned in the minority and women-owned business section of the procurement manual, section 2.16, but they are not clearly applied throughout the procurement manual. Agency personnel have acknowledged that this is ambiguous and could be confusing.

All public bodies do not utilize the *Agency Procurement and Surplus Property Manual*. The *Purchasing Manual for Institutions of Higher Education and their Vendors* is a procurement manual designated for the eight colleges and universities participating in the Commonwealth's Pilot Decentralization Project. This manual was structured to comply with the Virginia Public Procurement Act, and it combines vendor requirements with institution requirements in an attempt to create "one comprehensive manual for institutions and their vendors." The eight colleges and universities complying with the manual have small purchase authority up to \$15,000 as opposed to the \$5,000 limit designated for State agencies. In addition, these pilot program agencies' limit for

advertising in *VBO* is \$15,000, while State agencies must advertise in *VBO* for most goods and services estimated to cost over \$5,000.

Vendor Information. DGS/DPS also provides guidelines for all businesses competing for State contracts. The *DPS Vendors Manual*, revised in January 1995, is published under the authority of §2.1-442 of the *Code of Virginia* and generally applies to all State procurements except capital outlay construction and the procurement of professional services. Vendors competing for business with the State are advised to familiarize themselves with the contents of the manual. The *Vendors Manual* covers topics such as procurement methods, general requirements of vendors, solicitations, and evaluation and award. This manual is similar in content to the *Agency Procurement and Surplus Property Manual*.

In addition to the *Vendor's Manual*, DGS/DPS has attempted to assist vendors competing for State contracts through training and publications. However, according to agency staff, formal vendor training has not occurred since July 1994, due to restrictions in staff resources. Nonetheless, informal training still occurs to some extent. In addition to informal training, DGS/DPS provides assistance to vendors through the publication, *Virginia Business Opportunities (VBO)*.

The purpose of *VBO* is to increase participation of small, women-owned, and minority-owned businesses in the State procurement process. Agencies and institutions are required to advertise solicitations estimated to be over \$5,000 for goods and services and over \$10,000 for general highway construction and architectural and engineering services in *VBO*. DPS staff stated that *VBO* listings assist vendors, especially small and minority firms, in locating business opportunities that may not have been identified without this centralized publication. A DPS staff member concluded:

Minority firms, which are usually small firms, generally do not have the resources to visit the numerous State agencies that have business opportunities available. However, many of these opportunities are required to be published in *VBO* which is easily accessible by minority firms. On the other hand, large firms have the resources to visit numerous State agencies in order to check postings. What *VBO* does is close the gap in resources between the large firms and the minority firms.

The intent of *VBO* is two-fold. *VBO* attempts to broaden vendor participation and assist Virginia companies in identifying what bidding opportunities are available in State government. In addition, *VBO* attempts to assist small, women-owned, and minority-owned businesses in the State procurement process. More information is provided on *VBO* in the best practices chapter of this report.

State Employee Training. DPS staff informed JLARC that Virginia is the only state in the nation with a contracting officer certification program. The Virginia Contracting Officers (VCO) program is conducted by DPS staff. Through Virginia Contracting Officers, DPS conducts training activities related to the interpretation and

application of the Virginia Public Procurement Act, the *Agency Procurement and Surplus Property Manual*, and the *Vendor's Manual*.

DPS staff provide information in the following subject areas:

- procurement authority, policy, and responsibility,
- procurement planning,
- methods of procurement,
- contract administration and compliance, and
- surplus property.

Virginia Contracting Officers training is open to State employees, employees of political subdivisions who have purchasing responsibilities, and other interested parties. Only State employees with jobs related to public procurement are eligible for certification. The course is viewed as a training method for all other participants.

Virginia Contract Officers training addresses minority business solicitation as it relates to the Virginia Public Procurement Act and DGS/DPS procurement policies procedures. However, minority business solicitation policies are not covered as a separate issue; rather, these policies are discussed within general procurement policies.

Procurement Review. DPS has developed a procurement review program designed to ensure compliance with State procurement policies. Each year, DPS staff review selected State agencies for compliance with State procurement policies and procedures. Procurement Review analysts follow set guidelines and procedures while attempting to record agency compliance with the Virginia Public Procurement Act and DGS/DPS policies and procedures related to the Act. Procurement reviews may result in recommendations for agency policy revisions, procurement training, increased procurement authority, or decreased procurement authority.

Although these reviews appear to be comprehensive in their public procurement oversight function, JLARC staff found no mention of public procurement policies related to minority-owned business solicitation or participation in the procurement review guide. In addition, agency staff acknowledged that minority procurement practices were not reviewed and that no written comments on agency practices in this area would be available.

State agencies are required by statute to consult lists of minority businesses for identified solicitations. However, JLARC's survey of State agencies found that all procurement personnel in State agencies did not regularly solicit proposals or bids from minority businesses. In addition, all State agencies did not consult lists of minority businesses for solicitations. Furthermore, only 52 out of 120 agencies responding had established written policies or programs facilitating the participation of minority-owned businesses, as required by statute. Without specific guidelines for review of minority-owned business activity in the State's procurement process, agency compliance with *Code* provisions relating to oversight of minority participation could be impaired.

DMBE is Directed to Assist Minority Business Enterprises

As mentioned earlier in this report, DMBE was established to assist in the promotion and development of minority business enterprises. Although DMBE does not monitor agency compliance with the Virginia Public Procurement Act or DGS guidelines, DMBE does develop and distribute the Commonwealth's official list of certified minority-owned businesses. In addition, DMBE is authorized by statute to collect, evaluate, and report on data involving minority business activity. Also, procurement policy directs the department to coordinate programs and operations which contribute to the establishment, preservation, and strengthening of minority businesses. Further, DMBE statute authorizations are designed to assist the Commonwealth in monitoring the level of minority-owned business participation in State contracts.

DMBE's Certification Program and Agency Assistance. JLARC's survey of public procurement activity in State agencies identified a number of problems which agencies had experienced in the solicitation of minority firms. Only 22 State agencies were in compliance with all *Code* provisions surveyed relating to minority business solicitation (Table 11). In addition, 37 State agencies, out of 109 responding, indicated that they had a difficult time locating minority firms. The Commonwealth's public procurement policy directs DMBE to make a list of minority-owned businesses available to State agencies for public procurement solicitations. As discussed in Chapter II, DMBE's list of certified and noncertified minority firms underrepresents the total number of minority firms doing business with the State.

Despite having problems identifying minority businesses, less than 30 percent of agencies surveyed had requested assistance from DMBE. Thirty-three out of a total of 126 agencies surveyed responded that they had requested DMBE assistance (Table 12). The great majority of these were satisfied with the assistance they received. Out of the thirty-three agencies that stated that they had requested assistance from DMBE, 29 reported that DMBE was helpful, 26 reported that DMBE assistance was timely, and 26 reported that DMBE assistance was appropriate to the needs of the agency.

State Agency Progress Reports. As noted above, DMBE is directed to coordinate programs and operations that contribute to the establishment, preservation, and strengthening of minority business enterprise. As a part of this effort, DMBE is required to collect data on minority-owned business activity. However, a JLARC file review of DMBE's *Minority Business Procurement Report* found that these data were lacking. JLARC staff requested data from these reports for FY 1994 and FY 1995, and in both instances reports were incomplete. Although some State agencies indicated DMBE had requested that agencies not submit FY 1995 reports until the department had revised the report submission process, it appears that other State agencies were not aware of this change. The director of DMBE has indicated that the reporting process is under review and has expressed an interest in adopting a methodology similar to that used in this report.

Table 11**Code Compliance Table**

<i>Code Provisions Relating to Minority Procurement</i> ¹	<i>Yes</i>	<i>No</i>	<i>No Response</i>
Does your agency have a written policy or program regarding the participation of small businesses and businesses owned by women and minorities? §11-48	52	68	6
Does your agency consult lists of minority businesses for solicitations? §11-44	114	6	6
Does your agency regularly solicit proposals or bids from minority businesses? §11-44	107	13	6
Does your agency participate in outreach or informational activities? §2.1-64.37 (c)	87	33	6
Has your agency developed and implemented a systematic data collection process for providing information to the DMBE? §2.1-64.38	51	60	15
Has your agency designated an individual to have primary and continuing responsibility for matters concerning minority business enterprise? §2.1-64.37 (b)	48	61	17

¹ JLARC surveyed State agencies as to whether they had submitted a minority procurement annual report to DMBE for FY 1995. However, JLARC did not include this information in its code compliance review because DMBE has not yet requested agencies to submit that data for FY 1995.

Source: JLARC Survey of State Agencies on the Participation of Minority Businesses in State Contracts.

Table 12**Evaluation of DMBE Assistance**

	<i>Yes</i>	<i>No</i>	<i>No Response</i>
Received List/Directory?	78	39	9
Assessment of DMBE Assistance:			
Requested assistance from DMBE in 1995?	33	82	11
Assistance was helpful?	29	4	0
Assistance was timely?	26	4	3
Assistance was appropriate?	26	4	3

Source: JLARC Survey of State Agencies on the Participation of Minority Businesses in State Contracts.

CONCLUSION

All State agencies, but particularly DGS/DPS and DMBE, have statutory responsibilities in facilitating the establishment, preservation, and strengthening of minority business enterprise. In effect, minority-owned businesses rely on agencies' implementation of minority business related policies (primarily solicitation requirements) in their efforts to compete for business with the State. Therefore, when the implementation, oversight, or review of minority business policies are not complete or comprehensive, solicitation of minority-owned businesses may not occur as required. State agencies with minority-owned business oversight responsibilities need to increase their oversight efforts, improve coordination, and further develop automation capabilities in order to provide State agencies with needed direction and resources.

First, although it appears that DGS/DPS has implemented an extensive program for procurement review, the review process does not specifically address statutorily-required minority procurement activities. Reviewing State agency minority business procurement activity during existing DPS reviews would help monitor the efforts of State agencies in adhering to the State's policies in the area of minority business development.

***Recommendation (3).* In order to provide better oversight on minority business activity with State agencies, the Department of General Services' Division of Purchase and Supply should incorporate agency minority business procurement activity into its procurement review process.**

As demonstrated earlier in this chapter, agency procurement personnel are sometimes unclear as to the State's policies regarding minority solicitation procurement. This may be due in part to ambiguity in the DGS/DPS procurement manual. Further, while DGS/DPS training addresses these subjects indirectly, it does not emphasize these policies.

***Recommendation (4).* The DGS/DPS should clarify minority procurement policies in the DGS/DPS Agency Procurement and Surplus Property Manual. In addition, staff should emphasize compliance with the State's minority solicitation requirements in its training. These efforts should be supported by training material which clarifies State policy for agency procurement personnel.**

State agencies that certify or register minority firms — such as DMBE, VDOT, and DGS — should coordinate these activities. Under the current process, minority-owned firms may or may not be on the database of any of these three agencies. Under the current system a conscientious State agency would have to consult the lists of all three agencies in minority solicitation efforts. While the minority-related goals of these three agencies differ somewhat, the construction of a common database with appropriate functional identifiers would not be difficult, would benefit all State agencies, and would facilitate accurate reporting of participation data.

***Recommendation (5).* The task force identified in Recommendation 2 should identify mechanisms for increasing cooperation between agencies with minority procurement oversight, review, certification, and registration responsibilities.**

Increased automation by DGS/DPS and DMBE would better implement the State's intent to assist in the development of minority businesses. Neither data on minority participation at DMBE nor data on contract acquisition at DGS/DPS are available in an automated form. Therefore it would be difficult for these agencies to assess minority participation on a systematic basis. Further, the minority solicitation efforts of State agencies would be enhanced if DMBE could automate a consolidated list of minority firms. If the list were automated, it could be updated more frequently and agencies' solicitation efforts would be improved. As a result, minority-owned businesses could have increased opportunities to compete fairly for State business.

***Recommendation (6).* The task force should identify methods to increase automation in an effort to make minority business solicitation easier and more comprehensive for State agencies. In particular, the task force should examine methods for automating consolidated minority vendor data bases and for tracking minority participation in the contract procurement process.**

In meetings and interviews with JLARC staff, minority business owners discussed their concerns about not being able to secure business opportunities with the State. Some of their problems can be attributed to the absence of a comprehensive list of minority vendors in the Commonwealth. However, other shortcomings, which include minority firms declining to identify themselves as minority firms or declining to register with State agencies as minority firms, should also be taken into account when examining a lack of participation. In addition, some minority business owners stated that they feel as if they are "outsiders" in the State procurement process. Furthermore, vendor training programs have been discontinued in the DGS/DPS Vendor Development Section. In order for minority firms to participate in the State procurement process to the fullest extent possible, these issues, and other related issues, should be addressed.

***Recommendation (7).* The task force should review methods to increase vendor training. Training should include increasing minority firms' knowledge of the State procurement process and methods of doing business with the State.**

Although additional efforts to ensure statutory requirements regarding minority participation in public procurement are necessary, a number of State agencies are doing a good job in various aspects of including minority firms in the public procurement process. Chapter IV identifies some of these agency efforts. Several agency efforts are identified as "best practices" and may be consulted by other agencies which attempt to enhance minority solicitation efforts.

IV. Agency Best Practices in Minority Procurement

JLARC's 1995 report, *The Concept of Benchmarking for Future Government Operations*, identified benchmarking as an effective way for organizations to improve performance. Benchmarking is a management tool that focuses on exemplary processes and products. A benchmarking — or best practices — review focuses on successes in programs and services rather than deficiencies. A Minnesota best practices report stated the purpose of a best practice review:

While a traditional program evaluation focuses on organizational and performance deficiencies, a best practices review collects and highlights evidence of success in the design and delivery of services.

In this study, JLARC identified a number of State agencies that are doing a good job of attempting to incorporate minority-owned businesses into the public procurement process. While identifying the best practices of some of these agencies, this chapter attempts to provide State agencies with program examples for use in improving minority business solicitation processes.

JLARC staff established several criteria for reviewing agency programs for best practices. The criteria were designed to identify and highlight effective programs. Four programs were selected as exhibiting best practices in the area of minority business solicitation. Programs from the University of Virginia, the Department of General Services' Division of Purchases and Supply, the Virginia Department of Transportation, and the Department of Minority Business Enterprise are featured in this chapter.

BEST PRACTICES AMONG STATE AGENCIES

Benchmarking is a management practice that focuses on emulating best practices. Benchmarking involves identifying what is to be benchmarked, taking into account the needs and resources of the agency, integrating benchmarking findings, and acting on organizational findings. The American Productivity and Quality Center identifies four broad steps to benchmarking. These steps are: (1) planning a benchmarking study, (2) collecting data, (3) analyzing the data to determine where deficiencies exist, and (4) adapting to improve the product or process. By studying, analyzing, implementing, and monitoring the best practices of effective programs, agencies performing benchmarking initiatives can raise performance and subsequently efficiency and effectiveness.

Since the early 1990s, many government agencies have incorporated forms of benchmarking into their evaluation processes. Government agencies have utilized forms of benchmarking in efforts to focus on successful outcomes or results.

JLARC Evaluation of Best Practices

Selection of the four benchmarking programs in this chapter does not imply overall approval of an agency's procurement program. Nor does it imply that comparable programs do not exist in other agencies. It is also recognized that the selected agency practices may not be transferable to all other State agencies. However, State agencies should be able to review the programs identified and use them as comparators in improving their own minority business solicitation practices.

Three criteria used for identifying agency best practices were: (1) compliance with requirements in the *Code of Virginia*, (2) solicitation and procurement activity with minority-owned businesses, and (3) input from other agencies or organizations. Data on these criteria were collected in State agency surveys, in a comprehensive search of FY 1994 and FY 1995 computer records of the Commonwealth Accounting and Reporting System (CARS), and in structured interviews with public and private sector procurement practitioners.

Compliance with the Code of Virginia. In JLARC's survey of 126 State agencies with procurement authority, questions were asked involving agencies' compliance with the *Code* in the area of procurement activity. Provisions in the *Code* require State agencies to follow certain guidelines in the area of minority business participation in public procurement, including requirements to:

- consult lists of minority businesses for solicitations (§ 11-44),
- solicit proposals or bids from minority businesses (§ 11-44),
- prohibit discrimination on the basis of race, religion, color, sex or national origin (§ 11-44), and
- develop written programs on minority procurement (§ 11-48).

In addition, State agencies were surveyed on their use of outreach programs to inform minority businesses of procurement opportunities. Agencies were also surveyed on their compliance with DMBE's statutorily authorized requests. Through the above-mentioned information, JLARC analyzed whether State agencies were complying with *Code* provisions for fostering the development of minority businesses.

Procurement Activity with Minority-Owned Businesses. JLARC used information on total minority business procurement as an additional criterion for identifying agency best practices. As mentioned in Chapter II of this report, JLARC used FY 1994 and FY 1995 data generated from CARS reports to analyze State agency procurement activity with minority firms. While the first criterion measured agency effort, procurement activity with minority firms measures what agencies are actually spending in the area of minority procurement. No set amount or percentage was required, but a negligible amount of procurement activity may have indicated a lack of program success.

Input from Other Agencies. JLARC solicited input regarding exceptional agencies or programs from public and private procurement practitioners. Personnel in public and private organizations provided JLARC with information on exceptional agency accomplishments such as award-winning programs, programs which assisted minority vendors in the State procurement process, and programs which assisted State agencies in minority business solicitation.

The criteria provided JLARC with information on a wide range of State agency activity in minority business procurement efforts. Through this information, JLARC identified exceptional programs and captured some of the positive initiatives and accomplishments of State agencies. It should be remembered also that each of the selected programs emphasizes minority business development. Each agency continues to operate within the provisions of the Virginia Public Procurement Act and its imperative that the State give its business to the lowest responsible bidder.

JLARC staff's review of State agency activity in minority business solicitation indicates that a number of State agencies performed well in selected areas. For example, as identified in Chapter II, 23 State agencies spent more than \$1 million each with identified minority businesses, and 25 agencies were procuring 10 percent or more of their goods and services from minority firms in FY 1995. In addition, 92 out of 119 responding agencies had procurement goals for minority business activity in place, and 90 out of 105 responding agencies participated in outreach programs of some type. Although JLARC highlights four programs as best practices initiatives, a number of other State agencies are performing well in various areas of minority business solicitations

UVA's Office of Minority Procurement Programs

The University of Virginia's (UVA) Office of Minority Procurement Programs has been identified as a best practice program by private and public sector staff with expertise in public procurement. The university's program is characterized by leadership commitment, the allocation of dedicated resources, and an emphasis on training and dissemination of information. UVA's Office of Minority Procurement Programs, established in November of 1990, has as its goal to "strive for greater economic equity ... by encouraging, developing and expanding business opportunities for minorities and minority-owned companies."

For the past three years, the university has won the Virginia Regional Minority Supplier Development Council's (VRMSDC) Minority Business Enterprise Input Committee (MIC) Corporate Award in the non-profit/public sector category. MIC Awards are presented to members of VRMSDC that "have excelled in their minority business development programs." VRMSDC members are nominated by VRMSDC certified minority business owners, and a panel of minority entrepreneurs evaluates the nominees based on set criteria. The president of VRMSDC said that much of UVA's success at winning the MIC award is attributable to the leadership of UVA's Office of Minority

Procurement Programs and more specifically the office's director. The VRMSDC president noted that:

In the Office of Minority Procurement Programs, the university has a person with minority business recruitment as a primary responsibility, and this is key to the program's success.

JLARC's review found the university to be in compliance with statutory requirements. In addition, UVA was the State's second largest procurer of minority goods and services. In FY 1995, UVA spent \$7.4 million with minority-owned businesses. The creation and operation of UVA's Office of Minority Procurement Programs has been critical to the university's success in this area.

The University of Virginia takes a proactive approach to minority business participation, with particular emphasis on training. The Office of Minority Procurement Programs trains minority vendors on how to do business with the State and the university. In addition, the office places an emphasis on training all faculty and staff with purchasing authority on minority vendor solicitation and the goods and services they provide. This is consistent throughout the university's six procurement areas. The director of the Office of Minority Procurement Programs is the focus of the university's efforts in minority business solicitation.

Since its beginning, the office has conducted annual seminars to provide procurement information and professional development opportunities to minority firms. The annual seminars provide overviews of the Office of Minority Procurement Programs, sessions dealing with procurement solicitations, and keynote addresses. During its 1995 annual seminar, the office provided work session topics that included: writing proposals, working with majority firms, completing invitations to bid, and marketing strategies. Approximately 150 people attended the 1995 annual seminar.

In addition to its annual seminar, the University hosts quarterly seminars. While these meetings are open to all vendors, they tend to focus on issues relevant to small and minority-owned businesses. The quarterly seminars update vendors on changes in procurement policies or procedures and train vendors on existing procurement opportunities with the university. During these seminars, vendors are allowed to make presentations on their specific goods or services. In addition, vendors are able to attend work sessions on each of the university's six major procurement areas.

The director also establishes monthly meetings between purchasing personnel and minority vendors. In addition, monthly on- and off-site meetings between the director and minority businesses occur. These actions are established to inform minority vendors of the business opportunities that exist with the university. The director explained:

At the outset, the biggest challenge he faced was getting minority firms to believe that they had a chance of doing business with the university. He realized that he had to first go out and get some success stories.

Instead of waiting for minority firms to come to him, he set out and found minority firms. This process continues today. As part of the university's outreach program, the director continues to visit minority firms and attend trade shows.

Furthermore, when responsible minority vendors do not get contracts with the university, the director looks for ways he can encourage prime contractors to use minority subcontractors.

The office issues an index of minority vendors and the commodities they supply to all university procurement areas. In addition, the office established a data-base which lists over 1,000 minority firms by their commodity code. Because the list is automated, it can be updated on a timely basis. The automated list assists university staff with identifying minority vendors and soliciting business from them.

The office's director said that his mission is to encourage and develop business opportunities for minority firms in Virginia. He said he feels as if he has a "fiduciary responsibility" to firms to help them develop to their fullest potential.

The director said the university is unique in that it is the only State agency with a full-time minority procurement director. All of his duties are related to the minority participation in business opportunities at the university. The office is successful, he said, because it has the full cooperation of the university community. The university's president established the program and his leadership has contributed to the university's ongoing commitment to the program.

Virginia Business Opportunities

The Department of General Services' Division of Purchases and Supply (DPS) publication of *Virginia Business Opportunities (VBO)* was selected as a best practice in the area of minority business solicitation. The *VBO* is a continuous, comprehensive, and useful resource that is tailored to meet the needs of emerging businesses.

A 1983 Department of Management Analysis study found that most State agencies believed they were receiving adequate responses on procurement requests from majority firms but not from minority firms. As a result, the DPS Vendor Development Section, which now publishes *VBO*, established the periodical. *VBO* was designed to assist in addressing the lack of responses from minority firms in the public procurement solicitation process.

The purpose of *VBO* is to increase participation of small businesses, women-owned businesses, and minority-owned business in the State procurement process. *VBO* is a weekly publication of current business opportunities with the Commonwealth. Section 2.34 of the *Agency Procurement and Surplus Property Manual* states that "agencies shall advertise all procurements for goods and services over \$5,000 and for

general and highway construction and architectural/engineering services over \$10,000” in the *VBO*.

VBO is sent to approximately 3,700 subscribers, of which nine percent are minority vendors. Staff responsible for publishing *VBO* suggested that when marketing the publication, small as well as women and minority-owned businesses are the focus of these attempts. For example:

During marketing efforts, DPS staff with VBO responsibilities express to minority vendors that doing business with qualified minority firms is one of the DPS's highest priorities. Marketing efforts to solicit and register minority firms also explain how the division will offer respondents assistance on learning how to “work the government purchasing system.”

VBO provides information that is easily accessible by vendors wanting to do businesses with the State. DPS staff stated that about 150 different bidding opportunities are listed in *VBO* each week. Through *VBO*, bidders may request solicitations for business opportunities with the State without having to travel to the individual agencies to find these opportunities. This is important to minority firms which are generally smaller than majority firms and do not have the staff or financial resources to travel from agency to agency in order to check bid boards or make numerous calls in search of business opportunities. Staff at a private minority certification organization identified the importance of *VBO* in the minority business solicitation process. The staff member said:

*VBO is a good publication and it provides timely information. Minority businesses are able to find opportunities that they normally would not find absent *VBO*. In addition, I make minority firms aware of business opportunities that may be found in *VBO*.*

For example, when *VBO* subscribers decide on items they wish to bid on, they call the contact person listed in the agencies’ solicitation. Subsequently the solicitation is mailed or faxed directly to the potential bidder’s office, usually within 24 hours. Therefore, the subscriber saves additional time and resources. *VBO* lists business opportunities in eleven categories.

Vendors and State agencies and institutions subscribe to *VBO*. A yearly subscription, 52 issues, costs \$75. In addition, *VBO* may be accessed on-line, through the *DPS Bid Source*, for the same dollar amount. Because there are no general fund dollars allocated for *VBO*, the publication is operated on the basis of funds received through subscriptions. Although some individuals outside of DPS have stated concerns about the price of *VBO*, it appears that the purpose of *VBO* and its comprehensive listings of business opportunities should be taken into consideration when assessing its cost.

JLARC staff did not assess the extent to which all agencies posted notices in *VBO*. Given the value of this publication to its audience, State agencies attempting to

open their procurement opportunities to minority-owned businesses should familiarize themselves with the publication and ensure the posting of all appropriate opportunities.

VDOT's Disadvantaged Business Enterprise (DBE) Orientation Program

Responsible for the third largest state-maintained highway system in the nation, the Virginia Department of Transportation (VDOT) is the State's largest procurer of goods and services from minority-owned businesses. In FY 1995, VDOT procured a total of \$31.6 million from minority-owned businesses. VDOT's DBE orientation program is a continuous, ongoing effort to involve smaller businesses in projects that lend themselves to larger, more heavily capitalized firms.

JLARC found VDOT to be in compliance with statutory requirements regarding the participation of minority-owned businesses. VDOT includes hundreds of minority firms on its bidders' list and mails solicitations directly to appropriate firms. Also, in accordance with its Road and Bridge Specifications, VDOT has established guidelines for minority business solicitations by prime contractors. As will be discussed in the following pages, VDOT conducts an extensive outreach program.

As noted in previous chapters, a number of explanations have been suggested to account for the relatively low levels of minority participation in State contracts. For example, concerns have been raised regarding the complex nature of the State's procurement process. Also, some have suggested that firms traditionally doing business with the State have relationships and expertise that give them an advantage. Finally, the significant amounts of capital and the bonding required for larger State contracts have been cited as obstacles for minority-owned firms.

Cognizant of such challenges, VDOT has developed a unique and comprehensive program designed to assist businesses that have not historically participated in the transportation industry. The goals of the program are to: (1) support the development of Disadvantaged Business Enterprise (DBE) companies into responsible, competitive, and independent contractors; (2) ensure work opportunities for DBE firms while maintaining a competitive process; and (3) enhance relationships between State agencies, prime contractors, and DBEs.

In order to meet such goals, VDOT provides educational and technical training for minority and women-owned businesses in the form of seminars, individual business assistance, and special workshops. For example, VDOT produces a newsletter called *DBE—Eye on the Road*, which is designed to keep contractors and consultants abreast of activity that may affect the transportation industry and contracting market. A major component of this overall effort is the disadvantaged business enterprise (DBE) orientation program. The orientation program is one significant way in which the VDOT works toward achieving its DBE participation and allocation goals.

The department has developed its program in accordance with U.S. Department of Transportation policies which outline steps that give disadvantaged businesses an

equal opportunity to participate on contracts financed in whole, or in part, with federal funds. In 1982, Congress mandated the establishment of a DBE program in every state and directed that 10 percent of federal-aid highway moneys be spent with small businesses owned and controlled by socially and economically disadvantaged individuals.

The department's Equal Opportunity (EO) and Construction Divisions in the central offices share responsibility for the management of the DBE program. The EO Division has the responsibility for "certification, supportive services (management and technical assistance), and contract compliance." The Construction Division has responsibility for "DBE contract administration, which includes goal setting, review of prime contractors' documents, the monitoring of good faith efforts, and the monitoring and tabulation of contract awards to DBE forms."

To participate in VDOT's program as a minority or women-owned business, a firm must meet all of the qualifying Disadvantaged Business Enterprise criteria. The process of becoming a DBE is called certification. Through an evaluation process, the Equal Opportunity Division determines if an applicant meets the following certification criteria: (1) small business size standards, (2) at least 51 percent of the stock is owned by the disadvantaged individual, and (3) the day to day operations of the company are controlled by the designated disadvantaged owner.

In order to become and remain fully certified as a DBE by VDOT, firms must attend an orientation meeting. The orientation programs or training sessions are held regularly, usually once a month, in one of the department's nine districts. The VDOT staff present at the orientation serve as "ombudsmen" for the certified firms. They help answer questions and provide guidance, and familiarize businesses with State programs, processes, and forms.

VDOT's orientation program provides firms with an overview of the requirements of the DBE program, VDOT's contracting process, the expected work performance, and the supportive services available. The orientation is designed to help ensure that firms are informed of available activities and opportunities.

The department has recognized a number of differences between the experiences and concerns of general contractors and those of businesses providing consulting services. As a result, VDOT now offers a DBE orientation program for construction contractors and one for those DBE businesses providing consulting services.

At the start of orientation programs, DBEs are provided with the Virginia Department of Transportation's Disadvantaged Business Enterprise Orientation Manual. The manual is an exhaustive guide to doing work for VDOT. It contains background information about the DBE program, lists services provided by VDOT available to DBEs, provides instructions for and examples of administrative forms, discusses the bidding process, explores certain elements of business growth and development, explains many of the responsibilities and expectations of prime contractors when dealing with VDOT, and furnishes guidelines for complying with DBE program requirements. The manual

presents information clearly and comprehensively, with extensive examples, checklists and references. In addition to the distribution of the manual, the orientation includes a video presentation. A well-produced video summarizes and highlights key points addressed in the VDOT DBE Orientation Manual.

The VDOT representatives also review several important areas contained in the VDOT manual and open up the presentation to the questions and concerns of the DBEs. For example, instructions for completing required forms and any administrative issues surrounding the forms are reviewed in detail.

A valuable service discussed at length during the orientation is VDOT's Bulletin Board Service (BBS). The BBS was developed to aid the highway construction industry and to be an electronic avenue through which VDOT can inform contractors of ongoing projects and events. The service is provided free of charge, and VDOT assists contractors in linking up to the BBS.

BBS provides contractors with immediate access to advertisements, lists of plan holders, results of bids, lists of contractors (prequalified and certified), the yearly letting data listing, the State's major projects, bid tabs, and miscellaneous forms. Also, firms with access to the system can print out bids in a VDOT approved format. Through the use of BBS the bidding process becomes simplified and more accessible.

The VDOT DBE orientation program serves to promote minority, disadvantaged and women-owned businesses. As mentioned above, the VDOT orientation program is held frequently and in a variety of locations throughout the Commonwealth. Consequently, the program is accessible to any DBE that should desire to participate. DBEs benefit from the knowledge, expertise and practical experience of the VDOT staff. Furthermore, DBE firms are provided with valuable information in a usable form. Finally, the Virginia Department of Transportation's Disadvantaged Business Enterprise Orientation Manual is an excellent reference tool and guide that will remain an essential resource for DBEs doing business with the department.

DMBE's Second Annual Opportunities for DBE's Information Session

As discussed in Chapter I, the primary mission of the Department of Minority Business Enterprise is to "foster and promote the development and growth of the Commonwealth's minority business sector." According to the current director of DMBE, the emphasis of the Department is "marketing and getting businesses and buyers together." In addition, the director states that the DMBE has undertaken an "aggressive outreach effort." The Office of Agency Procurement (OAP), located within the Department of Minority Business Enterprise, performs a variety of functions and offers a number of different services to minority-owned businesses. Producing and hosting conferences and training sessions is one effective way in which the OAP fulfills its mission of providing assistance to minority business owners and helping such owners increase their sales.

One particular program, the Second Annual Opportunities for DBEs Information Session held in Richmond and co-sponsored by the Metropolitan Washington Airports Authority, provided local disadvantaged business enterprises (LDBEs) with the occasion to learn about the new midfield concourse construction project taking place at Washington Dulles International Airport. (An LDBE is defined as a small business concern which is organized for profit and which is located within a 100-mile radius of the Washington, D.C. zero mile marker.) This program provided a comprehensive overview of an outstanding minority business opportunity and provided targeted firms with specific information and contacts needed to take advantage of the opportunity.

Speaking to JLARC staff during the Information Session, an owner of a welding business stated that he was attending the meeting “to learn about available business opportunities and to network with other firms.” The business owner also said that he had recently become certified with the Department of Minority Business Enterprise, and that he was “now ready to seek opportunities for growth.” He explained that previously “he had not realized how many firms would be competing for the same projects.” He added that he now believed that “opportunities for networking such as this help smaller firms make contacts and gather leads.” He noted that “DMBE had been very helpful.” In fact, he stated that DMBE had provided him with “support and had encouraged him to move his company to the next level.”

Members of the DMBE staff were joined by representatives from the Metropolitan Washington Airports Authority, both of whom were available to address the comments and questions of participants gathered at the Information Session. Following an introduction and brief remarks by DMBE staff, an Authority representative began his presentation stressing the strong commitment of the Authority toward the inclusion of disadvantaged business enterprises. In fact, he noted that the new midfield concourse project would operate under a LDBE participation requirement of 28 percent. Consequently, both the representatives of the Authority and those of the DMBE stated that the significant participation requirement of the project could potentially provide many disadvantaged businesses with work.

Authority representatives discussed technical aspects of the project, enumerating the types of goods and services that would be solicited for the project. In addition, representatives of the Authority carefully explained specific considerations of which firms should be aware when developing bids. The DMBE staff added some general guidelines for use in developing bids and proposals. A representative from the Airports Authority also explained that plans/specs for the job were available at the offices of a number of prime contractors and distributed the plan holder’s list to the businesses present at the meeting. In addition, the Department of Minority Business Enterprise purchased a copy of the plans which would be available to firms for review at DMBE, thus providing increased and free access for interested firms.

As a follow-up to the information session, an exhibit hall and meeting for prime contractors and LDBEs was scheduled at an Alexandria location where prime contrac-

tors had the opportunity to meet with potential subcontractors in order to fulfill the 28 percent LDBE participation requirement. All firms present were encouraged to attend this meeting and to establish face-to-face relationships with prime contractors.

In order to make businesses aware of its projects currently under way, the Airports Authority offers a toll free business opportunities hotline. The hotline, which is updated weekly and operates 24 hours a day, seven days a week, announces construction, architectural engineering, supply and services opportunities with the Airports Authority. Also, the Airports Authority routinely advertises in the *Washington Post* and in a number of other periodicals. Similarly, the DMBE includes solicitations of the Airports Authority in its publications.

The program sponsored by the DMBE presented timely, specific and useful information. First, a fairly detailed overview of the midfield concourse project was provided. Participants were given access to the plans and specifications of the actual project. Representatives from both the DMBE and the Authority offered suggestions for developing successful bids and explicit methods of improving proposals. The program was a forum for addressing both the specific and general questions and concerns of the minority businesses. Not only did the staff of the DMBE and the representatives of the Authority stress the importance of establishing ties with prime contractors, but they also provided a definite time and location for doing so. Finally, the hotline number provided the attendees with a resource for uncovering future business with the Metropolitan Washington Airports Authority. Such a program for other major State projects, such as the construction of prison facilities, could increase minority participation in State funded construction.

CONCLUSION

A number of State agencies have best practice programs for minority business participation in public procurement. Although JLARC staff identified several best practice programs to be used as sources of information, other State agencies also conduct other activities with positive results. By identifying, analyzing, and to some extent replicating successful programs and practices, State agencies could be able to improve performance in this area.

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