

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

TARGETED GROUP DESIGNATION FOR
METROPOLITAN SPORTS FACILITIES COMMISSION

FINDINGS OF FACT,
CONCLUSIONS AND
ORDER

FINDINGS OF FACT

1. Minn. Stat. §16C.16, subd. 5, requires the Commissioner of Administration ("Commissioner") to periodically designate businesses that are majority owned and operated by women, persons with a substantial physical disability, or specific minorities as targeted group businesses within purchasing categories as determined by the Commissioner.

2. Pursuant to the above-cited provision, the Commissioner may target a group within a purchasing category if the Commissioner determines there is a statistical disparity between the percentage of purchasing from businesses owned by group members and the representation of businesses owned by group members among businesses in the relevant market area in the purchasing category.

3. In addition, an individual business may be included as a targeted group business if the Commissioner determines inclusion is necessary to remedy discrimination against the owner based on race, gender, or substantial physical disability in attempting to operate a business that could provide goods or service to public agencies.

4. The Department of Administration contracted for an independent study of the purchasing and contracting practices of the Minnesota Departments of Administration and Transportation, the Metropolitan Council, the Metropolitan Airports Commission, the Metropolitan Mosquito Control District and the Metropolitan Sports Facilities Commission ("Governmental Units").

5. The independent study resulted in a series of reports, one of which is entitled State of Minnesota Joint Availability and Disparity Study; Metropolitan Sports Facilities Commission (“MSFC Study”), dated October 23, 2009 (revised January 11, 2010) and submitted to the Minnesota legislature on March 11, 2010, the contents and appendices of which are hereby incorporated by reference, to determine whether a statistical disparity existed between state purchasing from or contracting with businesses owned by specific minority groups or women and the representation of those businesses within all businesses in the state purchasing category.

6. The MSFC Study found that the Metropolitan Sports Facilities Commission engages in outreach and training programs, monitors utilization of minority- and women-owned businesses, encourages small business participation in contracting, follows and requires contractors to follow state and federal anti-discrimination laws in part by including the requirements in contract language, uses standardized contract language and divides contracts into smaller units.

7. The MSFC Study quantitatively evaluated the purchasing and contracting practices of the Metropolitan Sports Facilities Commission (MSFC) in key purchasing areas by analyzing the MSFC’s payment data from January 2002 through December 2007, and by reviewing and analyzing purchasing and contracting files of the MSFC.

8. The key purchasing areas that the MSFC Study addressed were the construction prime contracting, architecture and engineering services, professional services, other services, and goods and supplies industries.

9. The MSFC Study compared the percentage of utilized contractors to those that were available to perform the work in the relevant market areas.

10. The MSFC Study considered a firm available if it had the capacity to have worked on an agency’s contracts and has been willing to do so.

11. The MSFC Study found that statistically significant disparities exist in utilization of businesses owned by African Americans in all industries examined.

12. The MSFC Study found that statistically significant disparities exist in utilization of businesses owned by Asian Americans in all industries examined.

13. The MSFC Study found that statistically significant disparities exist in utilization of businesses owned by Hispanic Americans in all categories examined.

14. The MSFC Study found statistically significant disparities in the utilization of businesses owned by American Indians¹ in all categories examined except architecture and engineering.

15. The MSFC Study found statistically significant disparities in the utilization of businesses owned by nonminority women in all categories examined except construction prime contracting.

16. The MSFC Study included an oral history analysis of anecdotes reported by minority and women business owners that alleged both active and passive participation in discriminatory practices in the marketplace by the Governmental Units which impeded minority and women business owners from the opportunities generated by the Governmental Units.

17. The independent study also resulted in a report entitled State of Minnesota Joint Availability and Disparity Study; Minnesota Department of Administration (“Admin Study”), dated October 22, 2009 (revised January 11, 2010) and submitted to the Minnesota legislature on March 11, 2010, the contents of which are hereby incorporated by reference.

18. The Admin Study included an analysis of purchasing and contracting from businesses owned by persons with a substantial physical disability.

¹ In this document, the term “American Indian” is used in lieu of the term “Native American” used in the MMCD Study.

19. The Department of Administration conducted a study entitled A Study of Discrimination Against Women- and Minority-Owned Businesses and of Other Small Business Topics: Supplementary Data on Disabled Business Owners (“Supplement”), dated February 1990, the contents of which is hereby incorporated by reference.

20. The Supplement found statistically significant disparities showing underutilization by state agencies surveyed of businesses owned by disabled persons by at least 55 percent across all categories.

CONCLUSIONS

1. Under decisions of the United States Supreme Court, significant disparity between the utilization of women and minorities and their availability to perform in the relevant market area is evidence of discrimination. Anecdotal evidence of discrimination is also relevant evidence of discrimination under the Supreme Court's decisions.

2. Under the Supreme Court's decision in City of Richmond v. Croson, 488 U.S. 469, 109 S. Ct. 706 (1989), government may take action to remediate a pattern or practice of discrimination where the discrimination is shown by significant statistical disparity and the means used to remediate the discrimination are narrowly tailored.

3. Statistical disparity exists in the MSFC’s utilization of businesses owned and operated by specified minority groups and women in comparison to their availability for purchasing and contracting as shown on the Table of Groups Experiencing Disparity in Metropolitan Sports Facilities Commission Purchasing and Contracting attached as Exhibit A.

4. Statistical disparity does not exist for American Indians in the architecture and engineering category, or for nonminority women in the construction prime contracting category.

5. Statistical disparity exists in the MSFC's utilization of businesses owned and operated by persons with a substantial physical disability.

6. In the Minnesota Court of Appeals decision in In re Ultraflex, 497 N.W.2d 641 (Minn. Ct. App. 1993), the statistical disparity shown in the Supplement evidencing past discrimination against businesses owned by persons with physical disabilities was found by the court to establish a rational basis for the state's targeted group procurement program.

7. The MSFC has considered and undertaken race-neutral measures to increase minority business participation in its purchasing and contracting.

NOW, THEREFORE, IT IS ORDERED THAT

1. Small businesses owned and operated by women and minority groups are designated as targeted group businesses for purposes of the Metropolitan Sports Facilities Commission's purchasing and contracting in the industries shown on Exhibit A.


2. Small businesses owned by persons with a substantial physical disability are designated as targeted group businesses in all purchasing categories.

3. This designation applies to the Metropolitan Sports Facilities Commission pursuant to Minn. Stat. § 473.142.

4. This designation is valid until amended by further order.

June 6, 2011

Date



Spencer Cronk
Commissioner of Administration

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION**

**TABLE OF GROUPS EXPERIENCING DISPARITY
IN METROPOLITAN SPORTS FACILITIES COMMISSION
PURCHASING & CONTRACTING**

(Based on the 2009 Disparity Study)

| | Construction Prime Contracts | Architecture & Engineering | Professional Services | Other Services | Goods & Supplies |
|-------------------|---|---|----------------------------------|---------------------------|---------------------------------|
| African American | X | X | X | X | X |
| American Indian | X | | X | X | X |
| Asian American | X | X | X | X | X |
| Hispanic American | X | X | X | X | X |
| Nonminority Women | | X | X | X | X |
| Disabled | X | X | X | X | X |

June 6, 2011