

Feasibility of Conducting a Disparity Study and Recommendations to Improve Supplier Diversity in Delaware

Supplier Diversity Council Report

2010

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Purpose

This report is high-level summary of impediments and recommendations to assist the Governor in making Delaware's procurement system the most transparent, nimble, and business-friendly in the nation. This report is not intended to provide the myriad of details that the SDC uncovered in defining each recommendation; rather this report is intended to give the Governor a broad overview of the SDC's research and recommendations. The purpose of this report is to: identify potential impediments concerning supplier diversity within state Government; provide the Governor advice and recommendations concerning supplier diversity strategies including strategies to eliminate these impediments; and report to the Governor on the feasibility of conducting a disparity study to evaluate the buying practices of the State of Delaware, focusing on the use of minority and/or women business enterprises (MWBES) pursuant to Executive Order 14. In an effort to provide leadership and assist minority and/or women business enterprises in competing for the service, commodity, and construction contracts with the State of Delaware, the Supplier Diversity Council (SDC) has engaged in a course of study in the following areas: research on the feasibility of a disparity study; evaluation of the buying practices of government agencies in the state of Delaware. Based on this course of study, the SDC has drafted the following recommendations regarding Supplier Diversity for the State of Delaware.

Executive Summary

Governor Jack Markell through Executive Order 14 created the Governor's Supplier Diversity Council on December 22, 2009. The Governor charged the council and its 11 members to:

- (a) Advocate for the State of Delaware's supplier diversity initiatives;
- (b) Offer training and information on the tools necessary for successfully doing business with the State of Delaware as a minority and/or women business enterprises;
- (c) Help maximize supplier diversity among the State agencies, and help increase contracting opportunities for qualified minority and/or women business enterprises;
- (d) Develop criteria for evaluation of supplier diversity initiatives pursuant to this Executive Order;
- (e) Identify potential impediments if any, concerning supplier diversity within State government, and develop strategies to eliminate these impediments;
- (f) Provide advice and recommendations to the Governor concerning supplier diversity strategies; and
- (g) Research and report back to the Governor no later than December 31, 2010 on the feasibility of conducting a disparity study to evaluate the buying practices of the State of Delaware, focusing on the use of minority and/or women business enterprises.

As part of achieving these goals, it is necessary to identify the challenges that all businesses face when seeking work with the State. At this time, the SDC does not recommend that the State conduct a formal disparity study. Studies can be justified when there is a demonstrated

compelling need for a remedial action. In the absence of such documentation, a disparity study is not fiscally responsible. Instead, the SDC recommends that the State conduct independent data collection in a comprehensive manner to determine whether a disparity study or remedial programs are necessary. By taking a progressive stance on inclusion and transparency through top-down policy directives, the State can create an atmosphere of transparency and inclusiveness. Many such activities are either in progress or included as recommendations in this report.

This report identifies the SDC's critical focus areas in State Buying Practices, namely Potential Impediments, Transparency and Opportunities, and Training and Education. The report further recommends that the State refrain from conducting a disparity study, and offers specific criteria for increasing the State's procurement processes in enabling the most transparent, nimble and business-friendly procurement system in the country.

I. Feasibility of Conducting a Disparity Study

Disparity studies provide agency-specific information and evidence, in accordance with current case law, to determine whether, and to what extent, remedial programs for gender or racial discrimination are appropriate. A disparity study will determine if an agency has up-to-date facts for existing and future efforts to increase the use of minority and/or women business enterprises. The Disparity Study subcommittee researched the feasibility of conducting a disparity study to evaluate the buying practices of the State of Delaware, inclusive of barriers that limit minority and/or women business enterprise participation in procurement process. By evaluating other state efforts, the subcommittee has prepared a summary of legal issues concerning disparity studies, and has made a recommendation based on the practicality and feasibility of a disparity study in the State of Delaware.

The SDC does not recommend that the State of Delaware conduct a formal disparity study at this time, but recommends that the State focus its energies and funds on data collection and design of the most transparent, nimble and user-friendly procurement system in the country.

1. State Disparity Studies

Before a state can pursue remedial action to remedy discrimination in their procurement process, a disparity study is usually done to gather data in a comprehensive manner and to provide support for the remedial program. The data gathered must conclusively demonstrate a clear disparity between the purchasing practices of the State or agency and the business market for remedial actions to be validated.

The SDC reviewed and evaluated several disparity studies from the local mid-Atlantic Region. State remedial programs are often the basis of litigation, and are largely challenged on the basis that an inadequate study has been performed to ascertain data. The states of Maryland, Massachusetts, and New York performed studies that led to legally defensible programs.

Successful programs employed the following common methodology in their disparity studies:

- Legal review
- Define the marketplace
- Determine MWBE availability in the marketplace by industry

- Review relevant literature
- Review of procurement practices and policies
- Qualitative evidence from MWBE business owners

The following data elements were also included in legally defensible studies:

- Statistical disparities in MWBEs business formation and business Owner Earnings
- Statistical Disparities in Capital Markets
- Qualitative Evidence

a. Legal Defensibility: Strict Scrutiny

Remedial programs are generally created to rectify race or gender based discrimination. Government programs that classify people based on race are subject to “strict scrutiny” standard of review by the courts: under the Equal Protection Clause of the Fourteenth Amendment, any classification based on race will be rigorously examined by the courts to ensure that there is a compelling government interest, that the law is narrowly tailored to serve that purpose, and that the law is the least restrictive means for achieving that interest.

Much of the discussion in the case law has revolved around whether evidence is ‘strong’ enough to establish a causal connection between the economic discrimination against minorities and the diminished opportunities to do business with the government. In order to satisfy the burden of strict scrutiny and defend the need for remedial programs, it is critical to provide evidence of the disparate impacts of economic factors on MBEs and to prove of disparate treatment by government agencies. Discrimination must be sufficiently demonstrated through statistics and economic models, which examine the effects of systems or markets on different groups. Further qualitative evidence of personal experiences with discriminatory conduct, policies or systems is also important in establishing discrimination. Specific evidence of discrimination or its absence may be direct or circumstantial, and should include economic factors and opportunities in the public and private sectors affecting the success of MBEs.

i. State Enactments – the *Croson* Case

Following the Supreme Court's landmark ruling in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), many state and local jurisdictions re-enacted affirmative action programs. In *Croson*, the Court invalidated the City of Richmond's minority and woman owned business program, where it found the program to be in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The Court stated that before a state government could resort to race-conscious measures, they must “identify” the discrimination to be remedied “with some specificity” and such programs must have a “strong basis in evidence” upon which “to conclude that remedial action [is] necessary.” *Croson*, 488 U.S. at 500. Even if a state can demonstrate a compelling interest and support that interest with a strong basis in evidence, the program must be “narrowly tailored” to further the state’s interest. *Croson*, 488 U.S. at 506; *Adarand v. Peña*, 515 U.S. 200, 238-39 (1995).

Absent specific findings of discrimination, it is impossible to assess whether a race-based remedy is narrowly tailored. *Croson*, 488 U.S. at 507. Remedying the present effects of identified past illegal discrimination is the only compelling interest that can justify the use of racial classifications in public contracting programs. *Croson*, 488 U.S. at 505; *Adarand*, 515 U.S. at 237. Only when a government shows that it has become “passive participant in a system of racial exclusion . . . [can it] take affirmative steps to dismantle such a system.” (internal quotations omitted). *Croson*, 488 U.S. at 493.

In summary, the Court held that a government entity indeed has the authority to enact remedial programs. However, the programs must meet a demonstrated compelling government interest, must be narrowly tailored to remedy the effects of prior discrimination, and must define an availability rate that utilizes the notion of ‘ready, willing and able’ firms. *Croson*, 488 U.S. at 509.

ii. Federal Enactments – the *Adarand* Case

In 1995, the Supreme Court overruled well-settled law and extended the application of strict scrutiny under the Due Process Clause of the Fourteenth Amendment to federal enactments in the case *Adarand v. Peña*. Just as in the local government context, when evaluating federal legislation and regulations, all racial classifications imposed by a government actor must be analyzed under strict scrutiny. In other words, such classifications are constitutional only if they are “narrowly tailored measures that further compelling governmental interests.” *Adarand*, 515 U.S. at 22.

After *Adarand*, Congress revised the federal Disadvantaged Business Enterprise (DBE) program. Subsequent litigation is replete with the critical evidentiary elements that must be established to show compelling interest in affirmative action program, and provide guidance on narrowly tailoring such programs.

In a subsequent report issued by the United States Civil Rights Commission, the commission identified five race-neutral strategies to encourage non-disparate contracting:

- enforce nondiscrimination subcontractor compliance;
- increase knowledge about opportunities to contract with the federal government,
- provide education or technical assistance to improve business skills and knowledge of federal procurement, and how to win contracts;
- give financial assistance or adjustments to offset the difficulties struggling firms encounter; and
- expand contracting opportunities and promote business development in underutilized geographic regions.

U.S. Commission on Civil Rights, *Federal Procurement After Adarand*, at 31 (Sept. 2005).

b. Costs of a Study

Legally defensible disparity studies are likely to cost upwards of \$1 million, and may increase exponentially dependent on the length and complexity of the study (e.g. some states have undertaken 10-year comprehensive studies). The costs of the studies hinge largely on two factors: data collection and data interpretation. The most costly and timely component is the data collection, which involves engaging a consultant to perform a myriad of data review, interviews, and investigations within the state and with third parties. The collection costs also involve researching archived proposals, contacting prime contractors for sub contractor information, and collecting qualitative data. This process is extremely time consuming, and drives up costs of the contracted consultant.

To date, Delaware has not set up systems to gather and organize such data as would be required to facilitate conducting a disparity study. This report recommends implementing a comprehensive data collection plan. If, after review of the data, disparities are evident, it is recommended that the SDC reassess the possibility of conducting a disparity study.

c. Discussion

A disparity study is conducted to gather data and that data is then frequently used to justify the implementation of a remedial program with numerical benchmarks. Such a study is integral in defending against a strict scrutiny standard of review. As stated earlier, Delaware does not have significant data, so at first blush, it may seem as though a study is warranted.

However, without any data or documented history, there is no evidence to support conducting a disparity study. Other states have initiated disparity studies when specific concerns were raised in complaints or in lawsuits. Currently, Delaware has only a few anecdotal complaints, and no hard data on bias in procurement, and absent that data, there is a lack of compelling interest in remediation. Before Delaware embarks on an expensive and time-consuming disparity study, it is in the State's best interest to ensure that race neutral practices were implemented to the greatest extent possible. It is the SDC's position that a stated policy of aggressively pursuing the most transparent, open, user-friendly procurement system possible would produce a number of enhanced race-neutral practices that would directly benefit all Delaware small businesses in general, and minority and women owned businesses in particular.

The *Croson* standard requires that jurisdictions show a "strong basis in evidence" that discrimination exists. After assessing the status of other states, Delaware is in a unique position because of the lack of formal complaints, litigation, data, statistics, or other empirical or qualitative data regarding supplier diversity, potential disparity, or discrimination. Delaware does not yet have a documented "compelling need" for remediation, and it is well settled that initiatives and programs must meet the standard of "strict scrutiny." Without any data, history, or evidence of a "compelling interest" in remediation, there is no evidence to support a disparity program.

However, this does not preclude the recommendation that Delaware engage in empirical and systematic data collection in order to understand the state's current position, identify our strengths, and enact policies and procedures that allow Delaware to have the most

transparent, nimble and user-friendly procurement system in the country. After reviewing and evaluating other state studies, the SDC recommends that Delaware gather data in a manner similar to states that have a legally defensible study, so Delaware may position itself to enact a legally defensible program in the future, if needed.

A court will be reluctant to uphold a remedial program if the ‘low-hanging fruit’ has not first been addressed. Delaware should gather data and research to understand the status of the state agency’s procurement positions. Understanding, assessing, and addressing the needs of the entire private sector will likewise advance the MWBEs position.

d. Conclusion: Disparity Study Not Recommended

The SDC does not recommend that the State conduct a formal disparity study at this time. Studies can be justified when there is a demonstrated compelling need for a remedial action. In the absence of such documentation, conducting a disparity study is not fiscally responsible. Instead, the SDC recommends that the State conduct independent data collection in a comprehensive manner so that if the data suggest that a remedial program is necessary, a program can be implemented in a legally defensible manner.

Implementation of strategies and approaches mentioned in this report would be less expensive and ultimately more impactful than the cost of conducting a disparity study whose results might be challenged. By taking a progressive stance on inclusion and transparency through top-down policy directives, the State can create an atmosphere of transparency and inclusiveness.

To assist with this process of data collection, a series of specific recommendations have been made in Section III of this report.

II. Overview of Delaware Contracting and Procurement Laws and Policies

Government Support Services (GSS) currently uses a Contracting List Serve to announce bid openings and other procurement related news internally and www.bids.delaware.gov for external outreach. Currently, the state structures procurements in a manner that best meets the needs of the end users as defined by the User Groups. There is flexibility within the Code that is used to permit solicitations to be aggregated for multiple similar needs while enabling awards to be made as low as the line item level. This permits flexibility to evaluate bids from larger corporations that have capacity to service the entire solicitation, as well as entertain bids from smaller vendors that can only provide portions of the deliverables needed. This process provides the contracting agency the flexibility to determine if awarding to only one or multiple vendors is in the end users’ best interests, as well as expanding the universe of successful bidders to include smaller and/or specialty vendors.

1. Potential Impediments – General

Identifying impediments is, and will be an organic process. Additional potential impediments will continue to manifest as various elements of Executive Order 14 are executed. Likewise, resolution of impediments will be varied. Resolutions will require cultural, organizational, budgetary and legal changes to eliminate impediments.

Currently, there is a lack of mandatory reporting on any type of procurements inclusive of MWBEs and second-tier spend reporting. Each agency has an individualized procurement system, and a different system of implementation, tracking, and reporting. Several of the recommendations of the SDC are intended to address these issues.

a. Cultural

Some State agency cultures, organizational structures, leadership and middle level management may resist changing current procurement processes.

b. Lack of Transparency for all Public Expenditures

The current lack of inclusion for all public monies in the transparency and supplier diversity efforts of the state creates an impediment for MWBEs. For instance, school districts represent roughly one-third of the state's operating budget and 25 percent of the state's capital budget, but formal procurement opportunities are not currently obligated to be reported on the state's central repository and districts have not been obligated to provide a supplier diversity plan. This requires businesses to have to seek business opportunities with 19 districts and 19 charter schools for the potential business generated out of one-third of the state's budget. School districts and other agencies that receive public funds are not included as covered or executive agencies, and are not subject to state centralization and aggregation efforts. This same opportunity exists for other entities that receive public monies, such as grant and aid.

c. Procurement: Over-Threshold

For over threshold projects, the procurement statutes outline specific selection methodologies, which can be an impediment to selection of a MWBE for a state contract. The lack of consistency in the current procurement processes may create a competitive disadvantage among vendors.

d. Procurement: Materiel and Non-professional Services

There are two methodologies for materiel and non-professional services: invitation to bid, or a request for proposal process. Pursuant to 29 Del. C. §6924, which is the RFP process, factors beyond price can be evaluated. Selections based on factors beyond price may be potential impediments to MWBEs.

e. Procurement: Public Works Projects

Title 29 Del. C. §6962 governs public works projects. Those selected under §6962 are based on price and the lowest responsive and responsible bidder. Selections based on factors beyond price, like lowest responsive and responsible bidder, may be potential impediments to MWBEs.

f. Procurement: Professional Services

Professional services are governed by 29 Del. C. §6981, and such services are selected by evaluation of the proposal and vendor. Selection criteria do not require selection based on price (e.g. for architects and engineers contracts, price is *not permitted* as a selection criterion). However, evaluation may be subjective and may be a potential impediment to MWBEs.

g. Procurement: Under-Threshold

MWBEs do not have a clear understanding of line-item agency spend. The lack of publication of “line-item spend” for non-contract spend results in a lack of business intelligence to market MWBE products, goods, and services. Agencies need a practical tool to enact a one for three sourcing policy initiative. Delaware has not implemented a tool capable of evaluating or reasonably sourcing open market spend. MWBEs have a large market presence in professional services and the lack of threshold requirements for professional services between open market and formal solicitation may be an impediment to MWBE opportunities.

h. Prompt Payment of Subcontractors

The absence of prompt payments by prime vendors to subcontractors negatively impacts the liquidity of small businesses inclusive of MWBEs. While the federal government requires prompt payment of DBE subcontractors on federally assisted projects, Delaware does not have a law that would allow the State to impose requirements to promptly pay subcontractors. For the State to contractually require it currently would involve interference with a contractual relationship to which the State is not a party.

i. Timely State Payments

Lack of consistency between state agencies for payment methods and procedures leads to inconsistent payment times for work performed and the processing of invoices. Further, interest payments that vendors are eligible to receive due to long transaction times are not consistently adhered to, which creates an added expense to all contractors including MWBEs and increases the cost for them to do business with the State.

j. MWBE Certification Process

Processes and procedures for MWBE certification are currently not robust enough to assure accuracy of MWBE status. Concerns have been raised about the efficacy and accuracy of the MWBE certification process, and the confusion between MWBE and DBE certification. The current MWBE certification system does little to ensure that all of the eligible MWBEs are certified. Nor does it ensure that those who register are in fact MWBEs at the time of certification and throughout MWBE designation.

The business community does not recognize the value of MWBE certification because the MWBE certification does not confer benefits or translate directly to business opportunities. As a result the MWBE certified vendors are not utilized as a resource or sourcing list where enhanced certification may otherwise be beneficial for corporate and state supplier diversity plans.

k. Complaints and Opportunities for Vendor Input

There is currently not a singular location to bring forward vendor concerns or agency concerns regarding the procurement processes and practices of the various State entities.

l. Training and Education: Impediments and Progress to Date

The absence of a formal training requirement and or certification program for State personnel who have the authority to execute a formal contract on behalf of the State creates an impediment to MWBEs. To date, trainings have been offered on an ad hoc basis and limited to informational sessions.

The OMWBE conducted a focus group and training needs assessment survey of certified minority and women businesses. The survey confirmed there is a need for training that is designed to enhance MWBEs knowledge of doing business successfully with the State.

III. Recommendations

There are ten main tenets of the SDC recommendations that incorporate the adoption of an overall Race/Gender Neutral Contracting and Procurement policy in the State of Delaware. The intent of these recommendations is to level the playing field for all businesses; provide for accountability and sustainability in the procurement process; and create a transparent and open procurement process that provides opportunity for all business enterprises, including MWBEs.

The ten SDC recommendations include:

1. Do Not Conduct a Formal Disparity Study At This Time
2. Assure Consistency of Procurement Practices Across Agencies
3. Conduct Independent Data Collection via E-Commerce Platform
4. Conduct MWBE Outreach and Training
5. Develop a Race/Gender-Neutral Small Business Set Aside Program
6. Sponsor Prompt Payment of Subcontractors Legislation
7. Strengthen the OMWBE Certification
8. Restructure the Reporting of the Office of Minority and Women Business Enterprises
9. Broaden the Scope of Supplier Diversity Council to Consider Veteran Owned Business Enterprises
10. Make Clear the Executive Support for Sustainability

Details of the recommendations are outlined below. The SDC seeks guidance from the Governor as to which recommendations are most feasible for implementation; and which recommendations the SDC should pursue further.

1. Do Not Conduct a Formal Disparity Study At This Time

It is recommended that the State does not conduct a formal disparity study at this time. Studies can be justified when there is a demonstrated compelling need for a remedial action. In the absence of such documentation, conducting a disparity study is not fiscally responsible. Instead, the SDC recommends that the State conduct independent data collection in a comprehensive manner so that if the data suggest that a remedial program is necessary, a program can be

implemented in a legally defensible manner. Implementation of strategies and approaches mentioned would be less expensive and ultimately more impactful than the cost of conducting a disparity study whose results might be challenged. By taking a progressive stance on inclusion and transparency through top-down policy directives, the State can create an atmosphere of transparency and inclusiveness.

2. Assure Transparency of Procurement Practices Across State Agencies

It is recommended that the State assure transparency of procurement practices across agencies. Inconsistencies or non-published procedures make it more difficult for businesses to understand the procurement processes within each agency. The State is seen as a single entity to the vendor community; however, when one agency's process differs from another, this creates multiple processes vendors must work within. Each Agency should operate under a transparent set of procedures and best practices that are known and understood to the vendor community and implemented by the State employees responsible for conducting procurement practices.

a. Offer Training for Procurement Specialists and MWBE Liaisons in Each Agency

The State should offer training for procurement specialist and MWBE Liaisons in each agency, which is a prerequisite to being authorized to enter into contracts on behalf of the State. Each agency currently implements elements of the process differently – from notification of purchasing opportunities, identification of evaluation criteria, selection of evaluation team members, and notification of bid award status.

The training should include, but not be limited to, the following topics:

1. Identifying and implementing a process for selecting members of an evaluation team;
2. Establishing and publishing a common metric for the evaluation process to assure a fair and transparent process (specifically where subjectivity is inherent and scores are subject to extreme variance);
3. Navigating the OMWBE database and other resources to access minority and women businesses;
4. Utilizing <http://www.bids.delaware.gov/> to notify vendors of state purchasing opportunities (both above and below threshold opportunities) and to update contracts and notify vendors after contracts have been awarded;
5. Applying the state code and policy through the life of the award;
6. Identifying purchasing opportunities and implement best practice communication methods to clearly communicate the agencies needs to the business community; and
7. Diversity and sensitivity training focused on giving value to all individuals and understanding the changing demographics of the nation.

b. Notify Vendors of all State Purchasing opportunities:

The State should notify vendors of all state purchasing opportunities, both above and below threshold through a centralized publication system similar to www.bids.delaware.gov.

c. Include One Certified MWBE in all Solicitations Below Threshold

The Governor should implement a policy to include one certified MWBE in all solicitations below threshold. This will encourage due diligence in identifying qualified MWBE vendors to do business with.

d. Finalize All Agency Supplier Diversity Plans

The OMB should finalize all Agency Supplier Diversity Plans. Executive Order 14 requires state agencies to prepare supplier diversity plans. In compliance with Executive Order 14, the OMB developed and formatted a best practices guide for development of agency supplier diversity plans, which is attached to this report for your reference. The SDC continues to work with liaisons to ensure that each agency has a report that is robust, and that the plans are ready to be filed annually with the Governor for eventual publication on the OMWBE website. Finalized agency plans will be submitted to OMB for final approval no later than July 30, 2011. Agencies' approved plans should be filed with the Governor no later than September 30, 2011.

3. Conduct Independent Data Collection via an E-Commerce Solution

It is recommended that the State conduct independent data collection via an e-commerce solution. The State of Delaware currently has little available data on supplier diversity. The State should implement a comprehensive data collection plan to gather and organize such data as would be required to implement race/gender neutral contracting and procurement policy to include spend, history, contractor information, transaction analysis etc.

a. Implement an E-Commerce Solution

The State should implement an E-Commerce Solution. An e-commerce solution involves an administration systems that would allow the State to manage inventory, view orders, manage and source vendors, and review transactions within the website database. An e-commerce solution will assist with many levels of current business transactions as well as create new online business opportunities. Such a system will have many facets and components in order to allow for comprehensive and methodical data collection. In addition to data collection, the platform will increase transparency, develop inter-agency systems management, and will ultimately make doing business with Delaware easier for both the government and for all of Delaware businesses. An e-commerce solution will include, but not be limited to the following:

i. Implement a Mandatory Vendor Registration System

The State should implement a mandatory vendor registration system. All vendors interested in conducting business with the State should be required to register. This registration will integrate with the State's financial system, bidding and contracting processes, OMWBE and DBE certification processes and revenue

databases. This system will be used to establish a percentage of successful MWBE businesses to receive contracts; establish a percentage of payments made to MWBEs; and demonstrate direct opportunities with MWBE firms for above and under-threshold spend. While businesses may perceive government mandates as a business impediment (anti-business/big government), the SDC has weighed this consideration against the need for data collection and efficient procurement and the long-term health and sustainability of Delaware's procurement practices.

ii. Create a Central Contract Repository

The State should create a centralized, web-based contract repository that provides a document management database for contracts and attachments. This repository should provide for notification of upcoming and currently awarded opportunities; make relevant and public documents available for vendors; provide for spending analysis and usage details; document awarded vendor information; publish procurement efforts of the State; and identify awarded contracts to MWBE vendors.

iii. Create Central Complaint Repository and Procurement Hot-line

The State should create a central complaint repository and procurement hot-line. There is no central repository for original complaints or information on how those complaints are dealt with. Lack of a central repository for complaints and concerns makes the State more likely to miss persistent problem areas and fail to address them quickly. Qualitative data is an important inclusion for a legally defensible disparity study. Should the State decide to conduct a disparity study some time in the future a central complaint repository and procurement hot-line will provide a vehicle for the State to gather the qualitative data needed for such a study.

4. Conduct MWBE Outreach and Training

It is recommended that the State conduct outreach and training to MWBEs. Outreach should be focused on providing information to the MWBE community on opportunities to do business with the State. Training should provide educational programs designed to enhance MWBEs knowledge of doing business successfully with the State.

a. Engage in Collaborative Multiple Outreach and Training Programs

The State should engage in multiple outreach and training programs, including:

- web based marketing and events;
- hospitality events;
- agency hosted pre-bid meetings for large public works and professional service needs in advance of solicitations and mandatory pre-bid meetings. These pre-bid meetings will create opportunities for MWBEs to identify partnerships, express interest, meet purchasing professionals, and gain knowledge about upcoming needs of state agencies (offer input to RFPs and ITBs).

b. Create and Implement a Two-Track Training Course

The State should create and implement a training course with two-tracks, coupled with online instructional courses that will accommodate the varying levels of sophistication among MWBEs.

- Track-One training should be dedicated to proposal development for materials and non-professional services, professional services and construction. The course curriculum should focus on the successful characteristics of awarded proposals (e.g. anatomy of the state proposal and/or bid opportunity; state mandatory requirements; proposal requirements; and do's and don'ts of submitting a successful proposal). Training of this sort could be offered to all interested organizational entities including not-for profit entities in Delaware.
- Track-Two training should target entrepreneurs that have experience running their businesses and include multiple strategies and potential partners. This track should offer training in comprehensive analysis of business growth strategies and methods for successfully competing for State opportunities.

5. Develop a Race/Gender-Neutral Small Business Set Aside Program

The State should define small business and develop a race/gender-neutral program that would allow vendors who register their small business with the proposed State Small Business Set Aside Program, to become members of a limited group of vendors eligible to participate in selected contract offerings.

6. Sponsor Prompt Payment of Subcontractors Legislation

The Governor should sponsor legislation that would require prompt payment of subcontracts as a Contract requirement. Other states have issued prompt payment policy directives sought to ensure the prompt payment of all subcontractors on non-construction procurement contracts. These directives seek to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful bidder who is awarded a contract must comply with the prompt payment requirements.

7. Strengthen the OMWBE Certification

The OMWBE should strengthen its certification by including strongly worded affidavits and a fraud statement into the process. Stronger legal language would discourage false and misleading statements, and give the OMWBE greater leverage if an infraction was discovered.

8. Restructure the Reporting of the Office of Minority and Women Business Enterprises

The Governor should restructure the OMWBE to increase visibility, autonomy, and freedom to fully execute the State's total supplier diversity mission separate from a department charged with daily implementation of existing procurement policy. The recommended restructuring of the

OMWBE will: elevate supplier diversity; eliminate the appearance of a conflict between a contracting office and an office advocating on the part of a group of individual business owners; maximize oversight of MWBE liaisons; allow access to decision makers; and increase the accountability of the respective agencies deliverables through reasonable but unrestricted advocacy.

9. Broaden The Scope of Supplier Diversity Council to Consider Veteran Owned Business Enterprises

The Governor should broaden the scope of the Supplier Diversity Council to consider matters that impact Enterprises other than MWBE including Veteran Owned Business Enterprises and Small Business Enterprises. Including Veteran Owned Business Enterprises and Small Business Enterprises in the supplier diversity conversation is an integral part of becoming the most transparent, nimble and user-friendly procurement system in the country.

10. Make Clear the Executive Support for Sustainability

The Governor should make clear the executive branch support for supplier diversity. *By identifying specific funds and recognizing an organization to carry out the supplier diversity mission, the Governor will make it clear that the Executive Office supports the sustainability of supplier diversity initiatives.* Executive leadership for supplier diversity is crucial to enacting the change and encouraging the growth needed, both in the agencies and in the business community. The Governor should hold a supplier diversity summit including his executive branch, executive staff, SDC, MWBE liaisons, business leaders, and the State of Delaware's prime contractors. At this summit the Governor should personally deliver a strong executive policy statement that outlines the Governor's vision and mission for supplier diversity including: the path forward with regard to recommendations in this report; the timely implementation of the agency supplier diversity plans; and encouragement to business leaders and prime contractors to step forward and engage in the outreach programs that will make this initiative a success.

IV. Conclusion

The above report identifies the potential impediments concerning supplier diversity within the State of Delaware Government; reports to the Governor on the feasibility of conducting a disparity study to evaluate the buying practices of the State of Delaware, inclusive of barriers that limit minority and/or women business enterprise participation in procurement process; and provides the Governor advice and recommendations concerning supplier diversity strategies including strategies to eliminate the potential impediments. Formally, as outlined in this report SDC recommends that the State:

1. Does not conduct a formal disparity study at this time. Studies can be justified when there is a demonstrated compelling need for a remedial action. In the absence of such documentation, conducting a disparity study is not fiscally responsible;
2. Assure transparency of procurement practices across State agencies by offering training for procurement specialist and MWBE Liaisons in each agency, which is a prerequisite to being authorized to enter into contracts on behalf of the State; notify vendors of all state

purchasing opportunities, both above and below threshold through a centralized publication system similar to www.bids.delaware.gov; implement a policy to include one certified MWBE in all solicitations below threshold; and finalize All Agency Supplier Diversity Plans;

3. Implement a comprehensive data collection plan to gather and organize such data as would be required to implement race/gender neutral contracting and procurement policy. This data collection plan should include an implementation solution that involves an administration systems that would allow the State to manage inventory, view orders, manage and source vendors, and review transactions within the website database; an e-commerce solution that encompass a mandatory vendor registration system; a central contract repository; and a central complaint repository and procurement hot-line;
4. Conduct outreach focused on providing information to the MWBE community on opportunities to do business with the State, and provide educational programs designed to enhance MWBEs knowledge of doing business successfully with the State;
5. Define small business and develop a race/gender-neutral program that would allow vendors who register their small business with the proposed State Small Business Set Aside Program, to become members of a limited group of vendors eligible to participate in selected contract offerings;
6. Sponsor legislation that would require prompt payment of subcontracts as a Contract requirement;
7. Strengthen the OMWBE certification by including strongly worded affidavits and a fraud statement into the process;
8. Restructure the OMWBE to increase visibility, autonomy, and freedom to fully execute the State's total supplier diversity mission separate from a department charged with daily implementation of existing procurement policy;
9. Broaden the scope of the Supplier Diversity Council to consider matters that impact Enterprises other than MWBE including Veteran Owned Business Enterprises and Small Business Enterprises; and
10. Make clear the executive branch support for supplier diversity by identifying specific funds and recognizing an organization to carry out the supplier diversity mission and holding a supplier diversity summit including the Governor's executive branch, the Governor's executive staff, SDC, MWBE liaisons, business leaders, and the State of Delaware's prime contractors.

The SDC believes that by following these recommendations the Governor can adopt an overall Race/Gender Neutral Contracting and Procurement policy in the State of Delaware and become the most transparent, nimble and business-friendly state for government procurement and contracts. The SDC looks forward to Governor's guidance as to which recommendations are most feasible for implementation; and which recommendations the SDC should pursue further.