



South Carolina  
Department of Transportation

October 24, 2008

Mr. Malik Watkins  
Carl Vinson Institute of Government  
PO Box 5144  
Savannah, Georgia 31414

Re: South Carolina Department of Transportation's 1995 Disparity Study

Dear Mr. Watkins;

Please find attached the Executive Summary of the "Study of Minority and Women-Owned Business Participation in the South Carolina Department of Transportation's Construction Contracts" provided to the department in 1995. The summary presents a synopsis of the methodology, findings and recommendations relating to the Department's disparity-type study. Additionally, you will find enclosed information relating to how the Department has and is currently handling these recommendations. I feel that the information contained in the Executive Summary should satisfy your inquiry relating to the study, as well as to what the SCDOT is doing in regards to the implementation of study recommendations.

Thank you for your inquiry.

Sincerely,

Arlene Prince

Director, Office of Business Development and Special Programs

Enclosures



The following information is being submitted in response to your inquiries pertaining to the SCDOT Disparity Study Findings published on July 7, 1995:

1. SCDOT acknowledged the 1995 disparity study, which concluded that there was a statistical disparity between the percentage of available, qualified women and minority contractors ready, willing and able to do SCDOT contract work and the percentage of contract dollars actually awarded to those contractors. The study recommended goals in the following ranges for SCDOT's federal DBE program: 10 - 15% for Highway and Bridge Preconstruction contracts, and 10 - 21% for Highway and Bridge Construction contracts. At the time of the study, approximately 3% of contract dollars had been awarded to DBEs.
2. The disparity study findings were accepted by the department. SCDOT has implemented various recommendations reflected in the study, including establishing a DBE goal of 10% after the findings were published in 1995. Implemented study recommendations are as follows:

a. Good Faith Efforts

- i. A Good Faith Efforts Committee (GFEC) was established by SCDOT to ensure compliance with existing requirements. The Committee meets on a monthly basis to review all projects established with DBE goals ensuring that the prime contractor is making the required efforts in utilizing SCDOT certified DBE firms on these projects. If the stipulated goal is not met and resolution cannot be accomplished, the GFEC will determine the appropriate action to include moving to the next lowest bidder on the list, if necessary.
- ii. On a monthly basis, SCDOT Business Development Center (BDC) disseminates in excess of 350 bid letting reminders to DBEs who provide the services needed for the contract.
- iii. SCDOT publishes an online DBE Directory, which is updated monthly.
- iv. SCDOT provides DBEs access, via internet, to various manuals and publications, such as Standard Specifications. Information is also provided to DBEs in training courses offered by SCDOT's BDC.

b. Supportive Services Program

- i. SCDOT has a strong DBE Supportive Services Program. Services are provided in the area of business development to include, loan, bonding, financial management, marketing, business plans, training and general legal assistance. Additional supportive services are provided through special program areas such as Entrepreneurial Development Institute (EDI), Business Development Academy (BDA), as well as an upcoming Mentor-Protégé (MP) Program.
- ii. A needs assessment, with subsequent focus group meetings, was conducted in an effort to determine the type of supportive services sought by DBE firms. Services currently being provided by the SCDOT BDC are based on the DBEs' expressed needs.
- iii. Various training opportunities, with materials being provided to DBEs, are sponsored by SCDOT during the year. In an effort to ensure DBEs are made of aware of changes affecting policies and procedures, programs are offered to include Standard Specifications, DBE Orientation, Construction Bidding and Estimating, How to Price a Job, CPM scheduling and Pre-Qualification.
- iv. SCDOT's Unified Certification Program Directory, as well as department personnel related to Business Development, DBE Program Development, EO, OJT and Title VI Programs, is made available on the SCDOT internet site.
- v. Training and development programs are monitored through the evaluations provided by DBE firms attending department sponsored programs.

c. Certification

- i. The Director for Business Development & Special Programs (OBD&SP) approves DBE Certification applications based on facts and recommendations from Certification Analysts. If a firm is denied certification, they are advised their right to appeal the decision through 1- the SC Administrative Law Court or 2- directly to the USDOT.
- ii. Online publications are available to DBE firms advising them of the names, telephone numbers and functions of key SCDOT personnel involved in the DBE program.
- iii. SCDOT has entered into a "Memorandum of Understanding" (MOU), with the Governor's office to increase participation of qualified DBEs in obtaining state procurement opportunities.
- iv. SCDOT has expanded its outreach efforts by participating in other organizations outreach activities to include the Governor's office and the Columbia Metropolitan Airport.

d. DBE Program

- i. Highway and Bridge Preconstruction contracts have been included in the DBE Program.
- ii. A semi-annual DBE utilization report is prepared and provided to FHWA and several senior managers at SCDOT on a bi-annual basis.

e. Administration of Department's DBE Program

- i. SCDOT Office of Business Development & Special Programs (OBD&SP) is assigned the responsibility for managing the department's DBE program, to include monitoring and enforcing the SCDOT's DBE policies/procedures, investigations and recommending the appropriate sanctions relating to DBE responsibilities. OBD&SP has established good working relationships with several offices within the agency whose daily activities involve DBEs.
- ii. Onsite monitoring is conducted by DBE Analysts. In addition to this, the BDC's Technical Engineering Assistance Liaison directly works with DBEs once they are awarded contracts ensuring actual use of the contracted DBE firms, as well as providing technical assistance so the DBE stays on track during the project.
- iii. SCDOT's OBD&SP created a centralized general complaint procedure. This procedure is in the process of being updated.

3. SCDOT is presently looking at ways to update the existing study and is exploring the feasibility of conducting an updated disparity study. It was determined that the average cost ran between \$600,000 – \$1.5 million dollars. A recommendation was submitted to the department's Research and Development Executive Committee (RDEC) to fund a Disadvantaged Business Enterprises Availability/Underutilization Study. The request included an estimated cost of \$600,000 with a research period of approximately eighteen (18) months. A Problem Statement was presented along with several other funding requests. Based on the selection panel's review, the disparity topic was not ranked in the top tier for funding at this time. In spite of this, the department continues to explore the feasibility of conducting a subsequent study, with consideration being given to the availability of financial resources.

SCDOT continues to build on the recommendations outlined in the study to improve upon programmatic responsibilities.

## *EXECUTIVE SUMMARY*

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## **EXECUTIVE SUMMARY**

The Executive Summary presents a synopsis of the methodology, findings, and recommendations resulting from the "Study of Minority and Women-Owned Business Participation in the South Carolina Department of Transportation's Construction Contracts." This "Croson Decision Disparity Study" was mandated by the 1993-94 South Carolina General Assembly as part of the Annual Appropriations Act. The major objective of the study was to "determine if a significant statistical disparity exists between the number of available qualified minority and women-owned contractors willing and able to perform highway and bridge preconstruction and construction, and building construction and renovation and the number of such contractors engaged by the Department or contractors working for the Department." The methodology for the study was designed to conform to the requirements of the U.S. Supreme Court.

The South Carolina Department of Transportation (SCDOT), through a competitive bid process, contracted with MGT of America, Inc. (MGT) to conduct a detailed, comprehensive "Croson Decision Disparity Study" of the SCDOT's contracting, as well as of subcontracting by prime contractors on contracts, from 1980 through 1993.

In preparing the report, MGT conducted a thoroughly detailed and comprehensive analysis which included:

- determination of the available, qualified minority and women-owned contractors willing and able to perform SCDOT contracts;
- a rigorous review of the SCDOT's records and contract files to determine actual utilization of minority and women-owned contractors;
- an in-depth analysis of the SCDOT's contracting and Disadvantaged Business Enterprise (DBE) policies, procedures, and practices;
- analysis of public testimony provided by DBEs and non-DBEs at public hearings in each of the seven SCDOT districts;

- analysis of personal interviews with SCDOT staff, DBEs, prime contractors, business leaders and selected key informants presently and previously involved with the DBE program;
- analysis of a mail survey of DBE and non-DBE vendors; and
- a legal review of *Croson* and other pertinent cases.

The above disparity study methodologies were expanded to include:

- specific identification of a list of available firms by name, address, and types of services;
- statistical analyses of the range of causes of disparity, including such factors as firm size, age, and bonding capacity, as well as race/gender factors;
- identification of specific problems which affect both minority-owned and women-owned business enterprises and other firms in their attempts to obtain SCDOT contracts and subcontracts;
- identification of narrowly tailored race-based and gender-based remedies to correct specific problems.

We are confident that our findings, conclusions, and recommendations are based upon a rigorous methodology and a full understanding of the research requirements established by the SCDOT. We are also fully aware of the importance and implications of this study for the South Carolina General Assembly, the SCDOT and its contractors and subcontractors, and the citizens of South Carolina. Because of the study's importance, the findings and recommendations in this report address issues ranging from macro to micro in nature and significance. Where appropriate, we have noted the limits of our review and stated our recommendations within the context of these constraints.

### **Study Objectives**

This study was designed and conducted to meet the objectives outlined in the SCDOT Request for Proposals. The major objective was to "determine if a significant statistical disparity exists between the number of available qualified minority and white women-owned contractors willing and able to perform highway and bridge preconstruction and construction, and building construction and renovation and the number of such contractors engaged by the Department or contractors working for the Department."

The study addressed the following issues within the context of the review standards established by the *Croson* decision.

- Does the governmental body have the authority to establish the MBE plan?
- Were there adequate findings to ensure that the plan was remedying past discrimination?
- Did the plan extend only as far as necessary to remedy the past discrimination?

To address the above issues and to accomplish specified objectives, the study was designed to conform to the four major requirements set forth in the *Croson* decision.

1. **Strict Scrutiny Standard of Review** - A majority of the Justices on the Supreme Court agreed that DBE plans which rely upon race-based remedies are subject to a strict scrutiny standard of review. Thus, the basis for a DBE plan and the proposed remedies must be factual, and the link between its scope and that factual basis must be demonstrated. The study supporting the plan must be well structured, carefully performed, closely analyzed, and judiciously executed to ensure that the recommended plan will be sustained.
2. **Identifiable Discrimination Directly or Indirectly Related to the Governmental Organization Contracts** - The City of Richmond attempted to rely on general findings of societal discrimination to support the need for its DBE plan. The Court did not accept this evidence. The Court required specific proof of the nature and extent

of the discrimination against minority-owned businesses within Richmond's local jurisdiction to support imposition of a local race-based remedy. The required study must evaluate who is or has been qualified to perform government contracts, who is and was selected to do the work, and the disparity between the two. The knowledge and experience to properly conduct valid statistical comparisons are essential to meeting this mandate imposed by the Supreme Court.

3. **The Need to Evaluate Non-Racial Based Remedies** - Even without a finding of local discrimination, the governmental organization could adopt a series of modifications to its contracting and purchasing procedures which would encourage participation by minority groups without regard to race. In addition, in *Croson* the Court requires that the enacting governmental organization evaluate non-racial solutions before it may adopt a more stringent measure such as a set-aside plan based upon race.
4. **The Solution Must Be in Proportion to the Problem** - Not only must the problem be defined on the local level, the Court has required that the solution be based upon the nature and extent of the local problem identified. Based upon this standard of review, any remedial plan must be carefully tailored to remedy the effects of past discrimination in the governmental organization's jurisdiction and must be in place only for the amount of time required to reverse the effects of such discrimination.

Our reviews and analyses were conducted according to the above guidelines and review standards.

### ***Methodology***

A detailed and comprehensive methodology was designed by MGT for conducting the disparity study for SCDOT based on the requirements set forth in *Croson* and related cases. The study covers a 14-year period, January 1, 1980, through December 31, 1993

**Construction Categories** - Separate DBE utilization, availability, and disparity analyses were conducted for each of the following business categories:

- Highway and Bridge Preconstruction
- Highway and Bridge Construction

- **Building Construction and Renovation**

**Market Area** - For each construction category, the market area was defined as the geographic areas (the state of South Carolina and individual out-of-state counties) from which the SCDOT purchased 75 percent or more of the related services. Expenditures in each construction category were summarized over the 14 years analyzed.

**Data Collection** - The construction project files were assessed to determine the type and format of data available. MGT then designed a data collection plan that manually reviewed all construction project files for the 14-year study. In the case of building renovations contracts, which were voluminous and had been arrived at via purchase orders, we limited ourselves to the data available since automation was implemented. Thus our renovation figures cover just the five-year period of January 1, 1989 through December 31, 1983.

**Utilization** - For each of the 14 years studied, MGT calculated the percent of contracting and subcontracting expenditures awarded to each DBE classification within the market area for each construction category. Expenditures to firms outside the relevant market area were excluded from the analyses. In calculating the percent of DBE subcontracting dollars for each construction category, we used subcontracts awarded to DBEs located within the prime contractor's market area.

**Availability** - The analyses for availability required a complex methodology. We began with U.S. Bureau of Census data, which gave us the total number of DBEs and white male firms in each county of the SCDOT's market area. Since census data for DBEs were available only for 1982 and 1987, we extrapolated straight-line growth rates to estimate the numbers of firms in other years.

**Disparity** - For each race/gender group within each construction category, the percentage of firms available was compared with the percentage of firms utilized. A

disparity index was calculated, indicating the ratio of percentage utilization to percentage availability times 100. The disparity index is always positive. The smallest value, 0.00, shows no utilization; a number under 100 indicates underutilization, while a number over 100 shows overutilization, and a disparity index of exactly 100 indicates parity. Any disparity index value below 80 reflects a substantial level of disparity and demonstrates adverse or disparity impact.

Anecdotal - Three methods were utilized for collecting anecdotal information from individuals representing DBEs and non-DBEs: a mail survey, public hearings, and personal interviews. The anecdotal information included facts, opinions, and perceptions about barriers and obstacles faced by minority and women-owned firms.

Surveys were mailed to 1,756 DBEs and non-DBEs. The survey population was drawn from the Master Vendor Database of available construction related contractors. Two hundred and eighty-five (285) firms responded to the survey, a response rate of 16.04 percent.

Seven public hearings were conducted in each of the SCDOT's Engineering Districts by MGT and SCDOT personnel. Owners of DBEs and non-DBEs were invited to provide oral or written testimony regarding their experiences in attempting to do business with the SCDOT, with public agencies, or with contractors in South Carolina. The public hearings were announced through notices in local newspapers, public service announcements on local radio stations, phone calls, and presentations to professional and community organizations. In addition, public hearing notices were mailed to all businesses listed in the Master Vendor Database. Testimony was received from 27 of the 84 attendees.

Personal interviews were held with 55 DBE and non-DBE owners. To identify and select individuals for interviews, two methods were utilized: 1) a stratified random

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**EXHIBIT ES-1  
TOTAL CONTRACT DOLLARS EXPENDED BY SCDOT, 1980-1993**

Construction Category	No. of Unique Firms	No. of Contracts	Dollars
Highway and Bridge Preconstruction	49	109	\$170,639,162.19
Highway and Bridge Construction	238	3,097	\$2,744,172,996.63
Building Construction and Renovation	247	406	\$27,716,344.09
<b>TOTAL</b>	<b>534</b>	<b>3,612</b>	<b>\$2,942,528,502.91</b>

Source: Derived from SCDOT records.

**EXHIBIT ES-2  
PRIME CONTRACT DOLLARS AWARDED TO DBE AND NON-DBE FIRMS  
BY CONTRACT CATEGORY, SCDOT 1980-1993**

Contract Category		Black	Hispanic	Asian and Native American	White Women	White Men	Total
Highway and Bridge Preconstruction	Total Dollars	\$0	\$0	\$0	\$0	\$145,588,381	\$145,588,381
	% of Total	0.00%	0.00%	0.00%	0.00%	100.00%	
Highway and Bridge Construction	Total Dollars	\$39,725,743	\$0	\$0	\$17,544,525	\$2,142,718,521	\$2,199,988,789
	% of Total	1.81%	0.00%	0.00%	0.80%	97.40%	
Building Construction and Renovation	Total Dollars	\$414,423	\$0	\$0	\$3,000	\$26,386,620	\$26,804,043
	% of Total	1.55%	0.00%	0.00%	0.01%	98.44%	
<b>Total</b>	Total Dollars	<b>\$40,140,166</b>	<b>\$0</b>	<b>\$0</b>	<b>\$17,547,525</b>	<b>\$2,314,693,522</b>	<b>\$2,372,381,213</b>
	% of Total	1.69%	0.00%	0.00%	0.74%	97.57%	100.00%

Source: Derived from SCDOT records.

**EXHIBIT ES-3  
SUBCONTRACTOR DOLLARS AWARDED TO DBE FIRMS  
BY DBE CLASSIFICATION, 1980-1993**

Construction Category		Black	Hispanic	Asian and Native American	White Women	Total
Highway and Bridge Preconstruction	Total Dollars	\$253,890	\$0	\$0	\$38,957	\$292,847
	% of Total <sup>a</sup>	0.17%	0.00%	0.00%	0.03%	0.21%
Highway and Bridge Construction	Total Dollars	\$69,236,050	\$3,275,675	\$25,777,772	\$37,416,224	\$135,705,721
	% of Total <sup>a</sup>	3.15%	0.15%	0.17%	1.70%	99.20%
Building Construction and Renovation	Total Dollars	\$698,001	\$0	\$36,511	\$64,425	\$798,937
	% of Total <sup>a</sup>	2.60%	0.00%	0.14%	0.24%	0.58%
Total	Total Dollars	\$70,187,941	\$3,275,675	\$25,814,283	\$37,519,606	\$136,797,505
	% of Total <sup>a</sup>	2.96%	0.14%	1.09%	1.58%	100.00%

Source: Derived from SCDOT records.

<sup>a</sup>Expressed as percent of total prime contract dollars shown in Exhibit ES-2.

**EXHIBIT ES-4  
COMPARISON OF DBE FIRMS AS PERCENTAGE OF TOTAL AVAILABLE FIRMS  
TO PERCENTAGE OF SCDOT CONTRACT DOLLARS AWARDED TO DBE FIRMS,  
1980-1993**

Construction Category	DBE Firms as % of Total Available Firms	% of Contract Dollars Awarded to DBE Firms
Highway and Bridge Preconstruction	13.45%	.39%
Highway and Bridge Construction	16.98%	8.78%
Building Construction and Renovation	17.90%	4.72%

Source: Derived from SCDOT records.

- Of the 406 Building Construction and Renovation contracts awarded by the SCDOT, 247 prime contractors received \$27,716,344.09. DBEs received \$417,423.00 (1.56%) as prime contractors and \$798,936.78 (2.98%) as subcontractors.

#### **Historical Review**

- According to reports issued by the Governor's Office and Legislative Audit Council, the SCDOT DBE program experienced major problems during the 1979 to 1991 time period. Those reports produced, among others, the following major findings:
  - A report of the procurement dollars of all State agencies issued by the Legislative Audit Council (LAC) in 1985 concluded there was a lack of minority participation based upon the finding that in 1983-84 minority-owned firms received only .01 percent of the State's contract dollars for goods, services, and building renovations and construction.
  - A 1991 LAC report on DBE program operations from FY 86-87 through FY 89-90, concluded that both oversight and recordkeeping of the SCDOT DBE program needed improvement in order to meet program outcomes. The LAC report questioned whether procedures were in place to monitor timeliness of payments from contractors to DBEs and that contrary to State law, the SCDOT had awarded construction contracts with DBE goals to companies which did not use certified DBE contractors. The report also pointed out that the SCDOT did not require written contracts between contractors and hauling subcontractors, which in the view of LAC, provided less protection to hauling subcontractors.
  - Findings from the 1991 report indicated that it was impossible to determine from SCDOT records whether \$91 million committed to DBE subcontractors during a four-year period was actually paid to DBE subcontractors. The inability to verify DBE payments also made it impossible to determine if the SCDOT had met the goal of expending 10 percent of all project funds with DBE firms.
  - The report also concluded SCDOT was in violation of federal guidelines by allowing material costs from furnish and haul agreements to count towards the DBE goal, even though the materials were not purchased from minority sources.
  - A review by the Governor's Office of Small and Minority Business Assistance (OSMBA) in 1986 of DBE participation for fiscal years 1981-82, 1982-83, and 1983-84 revealed

minimal participation of minority and women-owned businesses. Participation rates were less than one percent.

- The same review found evidence of DBEs acting as "fronts" and that non-DBEs had actually performed work on some DBE contracts instead of DBEs.
- Several investigations by OSMBA found evidence of patterns of discrimination which limited the participation of minority and women-owned businesses.
- In response to the documented low utilization of DBE firms and allegations of discrimination, significant changes have been made in both state and SCDOT policies and practices over the last 14 years.
  - In 1981, the South Carolina Consolidated Procurement Code was revised in response to concerns about the exclusion of small and minority businesses from the procurement activities of state agencies. The revisions were based upon findings outlined in a 1979 report entitled Report of the Joint Legislative Committee to Study the Problems of Small Business. The report concluded that new and/or minority businesses were excluded from the State's procurement process.

With regard to minority businesses, Article 21 of the revised Procurement Code gave prime contractors a tax credit equal to four percent of the payments to minority subcontractors on State contracts, established the Office of Small and Minority Business Assistance, and directed chief procurement officers to provide staff to assist minority businesses with State procurement procedures.

- In 1984, a more formal certification process was established and implemented by the Department to comply with federal requirements.
- In 1986, the SCDOT created a DBE/WBE Advisory Task Force to develop recommendations for strengthening compliance monitoring, establishing stronger linkages between the Department and DBEs and minimizing barriers to participation.

In response to recommendations from the Task Force and other entities, the SCDOT took steps to strengthen the DBE program by revising policies and procedures and strengthening monitoring and compliance. For example, the SCDOT increased scrutiny of firms applying for certification,

decertified several firms suspected of acting as a "front," provided "good faith efforts" training to contractors, strengthened the verification process for payments to DBEs by requiring the DBEs signature on quarterly report forms, developed a computerized tracking system to record DBE payments, and developed a plan to respond to Task Force recommendations, including appointment of an Executive Assistant for Minority Affairs who reported directly to the Executive Director.

- Also in 1986, the State Appropriations Act included a provision to spend 10 percent of State construction dollars with small and disadvantaged businesses. In 1987, new language was added to the 10 percent proviso which required 10 percent of total state highway funds for construction contracts be spent with DBE/WBE firms and gave SCDOT the option of using goals or set-asides. The 10 percent goal was equally divided between DBE and WBE firms. The SCDOT was also authorized to waive or guarantee bonding requirements for set-aside contracts less than \$250,000.
- In response to a 1991 Legislative Audit Council Report, the SCDOT strengthened penalties against prime contractors for substituting DBE subcontractors without prior approval and made other changes to strengthen program administration and operations.

### **Policies, Procedures and Practices**

- The current bonding requirements for participating in SCDOT contracts are more often an impediment to DBE firms than to non-DBE firms. In our survey of contractors, 26 percent of Black firms and 14 percent of WBEs indicated that bonding requirements prevented them from receiving a SCDOT prime contract, as opposed to only 8 percent of non-DBEs who made this response. Similarly, while 20 percent of Black firms reported that bonding requirements kept them from working for the SCDOT or as subcontractors, only 3 percent of non-DBEs reported bonding to be a problem.
- Since a contracting firm's capacity rating determines the maximum contract on which it may bid, the current practice of issuing large contracts prevents most DBE firms from bidding on SCDOT projects as prime contractors and relegates them to subcontractor status. Since 1980, only 2.45 percent of the Department's prime contract dollars have gone to DBE firms. The average contract dollar amount awarded over the 14 years of the study period to non-DBE firms is \$850,000 versus \$250,000 to DBE firms.

- The current prequalification requirements, which classify and rate firms on the basis of "a verified showing of experience, net liquid assets, responsibility, record, and available equipment," prevent many DBE firms from becoming eligible to bid on SCDOT work. According to our survey, DBE firms are young (thus less experienced) and smaller (thus less well capitalized) than non-DBE firms. They have fewer licenses, fewer employees, and lower bonding capacity. Furthermore, they reported their average largest prior contract to be under \$500,000, as opposed to the average largest prior contract of non-DBE firms of more than \$500,000.
- The state set-aside program which designates that 10 percent of the contracts be set-aside for DBE firms has limited the dollar participation of DBEs in state contracting. Although DBEs have received over 15 percent of the state contracts awarded (60 of 391 contracts), they have received only 4 percent of the dollars (\$9,351,630.36 of \$194,970,863.13).

Note: This analysis is based on special tabulation of state highway and bridge construction contracts and awarded dollars.

- The current payment tracking system is not being used to monitor compliance of prime to sub payments on an ongoing basis. Hence, some subs are not paid on time, contributing to their cash flow problems. In our survey, 26 percent of Black subcontractors and 9 percent of white female subcontractors cited inadequate capital as a reason for not doing more work for the SCDOT. Only three percent of non-DBE subcontractors reported a similar problem.
- The Director of Compliance as Liaison Officer does not report directly to the Executive Director as prescribed in 49 CFR 23.45(b).

#### **Anecdotal Findings**

- DBEs still face significant constraints and barriers in performing contracts for the SCDOT. Lack of financing, the inability to meet bonding requirements, prime contractor practices, and ineffectiveness of the DBE program were cited as major barriers throughout the collection of anecdotal evidence.
- Anecdotal evidence revealed that DBEs felt they were treated differently and in some cases unfairly in comparison to non-DBEs. Factors cited included:
  - perceptions that DBEs were evaluated by different criteria and/or higher standards when seeking loans, bonding, insurance, and performing SCDOT contracts;
  - perceptions that DBEs had less access to financing, bonding, and competitive prices for supplies, equipment, and materials;

- perceptions that DBEs were more likely to encounter deceptive business practices and favoritism.
- Perceptions and comments revealed varying opinions about the impact and effectiveness of the SCDOT DBE program. Some non-DBEs felt the program should be dismantled because it was unneeded, required too much paperwork, and increased their costs. Other non-DBEs were more favorable but felt significant improvements were needed. There were strong perceptions among DBEs that the program had been ineffective with regard to stimulating the growth and development of DBEs and some questioned the commitment of the SCDOT. Factors cited included:
  - perceptions that DBEs were disadvantaged by the relationships between prime contractors and SCDOT district staff. For example, many DBEs felt the relationships resulted in favoritism and preferences toward prime contractors in resolving disputes related to change orders and other aspects related to contracting;
  - perceptions that the SCDOT has knowingly tolerated fraud and abuse relative to DBE contracting;
  - perceptions that the SCDOT has failed to certify legitimate DBEs but knowingly certified fraudulent firms;
  - perceptions that the SCDOT has been nonresponsive to the needs of most DBEs;
  - perceptions that only a few "favored" DBEs get contracts.
- There is ample evidence in the perceptions and comments from DBEs that some longstanding problems and complaints related to DBE participation have not been fully resolved. Several factors were cited:
  - perceptions that prime contractors continue to control the SCDOT in the various districts and are allowed to abuse the program;
  - perceptions that sanctions against abuses are either nonexistent, unevenly enforced or weakly enforced;
  - perceptions that DBEs still do not get a fair share of SCDOT contracts;
  - perceptions that DBEs operate in a hostile environment created by some prime contractors and SCDOT staff in some

districts and that the SCDOT, as an agency, has passively allowed this environment to exist;

- perceptions that DBEs lack basic business management skills, are under-capitalized, and unable to grow and develop in today's competitive marketplace because of discriminatory practices in the market place.
- Based upon our analysis of anecdotal information, we conclude that DBEs have, over the years, faced significant constraints and barriers in performing contracts for the SCDOT. In spite of major efforts by SCDOT, many of the problems and issues identified throughout the program's history are still perceived as major problems by the participants in the program.

### **Race-Neutral and Gender-Neutral Programs**

- Although a number of race and gender neutral programs are available for small business development and business development assistance, small and minority businesses continue to have limited access to growth opportunities and to equitable opportunities for full participation and utilization within the state system.
- Even though race and gender-neutral programs exist in South Carolina, they have not been sufficient to address the problems faced by DBEs in obtaining SCDOT contracts. This is demonstrated by comparing the findings of the Highway and Bridge Preconstruction contracts and the Highway and Bridge Construction contracts.

The highway and bridge preconstruction contracts were excluded from any form of a DBE program during the study period. Only race and gender-neutral programs were available to highway and bridge preconstruction contractors. The statistical analyses of preconstruction contracts reflects no utilization of DBE firms. All (100%) prime contracts were awarded to white men-owned firms. When subcontracts are included, only 0.21% of all preconstruction contract dollars were paid to DBEs (0.18% to Black-owned firms and 0.03% to white women-owned firms).

The highway and bridge construction contracts on the other hand were included in some form of a goals program during the study period, primarily the federal DBE program. The DBE program was a race and gender preference program. This program required that Highway and Bridge construction projects have an annual DBE goal of 10%. The statistical analyses show that DBEs were awarded 8.78% of Highway and Bridge construction contracts as either primes or subcontractors. DBEs were awarded 2.61% of the prime contract dollars and 6.17% of the subcontractor dollars.

Thus, over the 14 years of the study period, only when a DBE program has been in place, as with the Highway and Bridge Construction contracts, has the SCDOT contracted significant dollar amounts to DBE firms.

### ***Recommendations***

This section presents a summary of our recommended changes in the SCDOT's DBE program based on the findings presented in Chapter 4.0, *Historical Evidence*; Chapter 5.0, *Analysis of DBE Policies, Procedures, and Practices*; Chapter 6.0 *DBE Findings*; and Chapter 7.0, *Anecdotal Evidence*. The recommendations are presented in two general categories:

- Recommendations which address the availability and utilization of DBEs in the construction areas, as identified in Chapter 6.0.
- Those recommendations which address major issues of policy, operations, and organization raised in Chapters 4.0, 5.0, and 7.0 of the Final Report.

Our general policy recommendations to the SCDOT reflect our analyses of the effects of SCDOT policies and practices on DBEs. They assume that:

- constraints and barriers can be minimized by providing necessary resources to monitor and enforce existing SCDOT policies and procedures;
- constraints and barriers can be minimized by increasing key users' accessibility to, knowledge of, and application of policies and procedures; and
- constraints and barriers can be minimized by sensitivity training of key staff and adoption of a customer service orientation.

### ***DBE Program Recommendations***

The disparity findings in Chapter 6.0 show substantial underutilization of DBEs in preconstruction contracts for highway and bridge, highway and bridge construction, and building construction and renovation. Our findings clearly document the need for a race- and gender-based program.

Exhibits ES-5, ES-6, and ES-7 show the projected availability and recommended goals for highway and bridge preconstruction, highway and bridge construction, and building construction and renovation. Each exhibit shows the projected availability for

**EXHIBIT ES-5  
PROJECTED AVAILABILITY AND RECOMMENDED GOALS  
HIGHWAY AND BRIDGE PRECONSTRUCTION**

	<b>Blacks</b>	<b>Women</b>	<b>Native American/Asian/ Hispanic</b>	<b>Combined DBE</b>
Projected Availability	3.35%	9.15%	2.01%	
Recommended Goals - State Program	2%-4%	6%-10%	2.00%	
Recommended Goal - Federal Program				10%-15%

**EXHIBIT ES-6  
PROJECTED AVAILABILITY AND RECOMMENDED GOALS  
HIGHWAY AND BRIDGE CONSTRUCTION**

	<b>Blacks</b>	<b>Women</b>	<b>Native American/Asian/ Hispanic</b>	<b>Combined DBE</b>
Projected Availability	10.98%	9.70%	0.67%	
Recommended Goals - State Program	5%-11%	6%-10%	1.00%	
Recommended Goal - Federal Program				10%-21%

**EXHIBIT ES-7  
PROJECTED AVAILABILITY AND RECOMMENDED GOALS  
BUILDING CONSTRUCTION AND RENOVATION**

	<b>Blacks</b>	<b>Women</b>	<b>Native American/Asian/ Hispanic</b>	<b>Combined DBE</b>
Projected Availability	13.93%	7.29%	0.72%	
Recommended Goals - State Program	6%-14%	3%-8%	1.00%	
Recommended Goal - Federal Program				10%-22%

each DBE classification, the recommended goals for each DBE classification for the state program, and the combined DBE goal for the federal DBE program. The goals for the state DBE program are presented as a range. The SCDOT should use the lower number as a minimum goal. The program should be evaluated annually and the goal gradually increased to meet availability.

The SCDOT should consider several factors in establishing goals for the various DBE classifications:

- The estimated availability of each DBE classification as projected in Exhibits ES-5, ES-6, and ES-7;
- The expected or anticipated growth in number and capacity of each DBE classification each year;
- The projected type and number of contracting opportunities for next year;
- The utilization of each DBE class for the current year; and
- The extent to which recommendations related to program enforcement, monitoring, and supportive services will be implemented.

To eliminate the underutilization described in the disparity findings in Chapter 6.0, the SCDOT should adopt an aggressive program which emphasizes the utilization, growth, and development of minority businesses. These areas are critical because they should ultimately result in graduation from the program, which in the long run will stimulate the creation and growth of new minority firms. In attempting to increase the utilization, growth, and development of DBEs, the SCDOT should recognize the following factors:

- The need to address the barriers and constraints outlined in this report;
- The need for a strong, well staffed compliance monitoring function for the DBE program; and

- The need for an effective Supportive Services Program which meets the needs of a majority of DBEs.

The SCDOT should attempt to increase overall goals and utilization of DBEs each year, consistent with growth in availability. Goals for subsequent years should be increased for each DBE classification to stimulate economic growth and shorten the life of the state DBE program. The SCDOT should provide adequate assistance to growing and emerging DBEs to increase their chances for long-term success. The overall goals for each DBEs classification in each business category should provide the basis for the establishment of individual project goals for state-funded project. On federally-funded projects, the DBE qualifications set by federal regulations should be followed, but SCDOT has sufficient evidence to increase the federal DBE goals from 10% up to 22%.

To assist the SCDOT in establishing its DBE goals, Exhibits ES-2, ES-3, and ES-5 provide:

- the projected availability for each DBE category;
- the recommended goals for the state program for each DBE category; and
- the recommended goals for the federal DBE program.

Availability was projected for 1995 based on 1982 and 1987 actual data (the most recent two years of available data) from the Census Bureau for both DBE and white men firms. Because future projections tend to progressively lose their reliability as the number of years are extended beyond the most recent actual data year, and because our 1996 availability estimates are nine years beyond our last actual data point, we highly recommend that the SCDOT update its DBE availability data (Exhibits 6-11 through 6-13) as soon as the U.S. Census releases the results of its 1992 surveys of minority and women-owned businesses. MGT will notify the SCDOT of its availability.

We believe that the goals recommended in this section, coupled with other recommendations, particularly those related to monitoring and enforcement, will be critical in eliminating longstanding patterns of underutilization.

***Policy, Operations, and Organization Recommendations***

Major recommendations are divided into five sections that address specific programs or divisions of the SCDOT. They include the following:

**Good Faith Efforts**

- Good faith efforts should be closely monitored and evaluated. A series of steps which must be followed to demonstrate good faith should be developed to strengthen existing requirements.
  - Primes should demonstrate that they allow enough time for DBEs to respond to bid opportunities.
  - Primes should demonstrate that they contact only those DBEs which provide the services needed for the contract.
  - Primes should demonstrate that they advertise for bids from DBEs in general circulation newspapers in the districts where the work will be performed.
- To ensure that good faith efforts are made, a quarterly report should be developed, by the Office of Compliance, which summarizes all contracts on which a good faith effort was used to justify not meeting DBE goals. The report should identify where good faith efforts were rejected and why, and where good faith efforts were accepted and the justification.
  - Where monitoring of SCDOT projects with respect to utilization of DBEs indicates failure to accomplish DBE goals, the Office of Compliance must develop and implement appropriate corrective actions.
  - Annually, DBEs which have bid on contracts during the fiscal year should be provided with a two- or three- page summary of changes in contracting policies and procedures.

**The Supportive Services Program**

- The SCDOT's Supportive Services Program should be re-evaluated and strengthened. A needs assessment should be done within the next year to better determine the supportive services needs of

### **Administration of the Department's DBE Program**

- A single office in SCDOT should be assigned the responsibility for managing the Department's DBE program. That office should:
  - manage all investigative functions and responsibilities;
  - monitor and enforce the Department's DBE policies and procedures and DBE program requirements;
  - recommend appropriate sanctions.
- The Department should develop a stronger system for reporting and monitoring payments to DBEs.
- The Department should conduct on-site monitoring and observation to ensure actual use of DBE subcontractors by prime contractors as provided in the bid and contract. A minimum of two on-site visits should be conducted with the first occurring within three weeks of project start-up.
- The SCDOT should develop a centralized complaint system, located in the Office of Compliance, to log, track, and resolve disputes of DBEs. The complaints should be analyzed regularly to identify patterns.

It is also strongly recommended that the SCDOT develop a schedule with goals and dates, to implement the recommendations in a timely manner.

DBEs, following which, a supportive services strategic plan should be developed, implemented, and closely monitored.

- The Supportive Services Program should annually survey a sample of DBEs about the attitude and helpfulness of the SCDOT staff.
- The Supportive Services Program should also provide DBEs with access to and information about the SCDOT's contracting system, contracting policies and procedures, and key players.
- The SCDOT should develop criteria and standards by which to measure the progress and economic impact of the training and development programs for DBEs.

### **Certification**

- To make the appeal process meaningful, initial certification decisions should be made by someone other than the Director of the agency. Currently, the Director both approves initial certification, and signs off on any appeal decisions involving the same firms.
- As part of the certification package, the SCDOT should include the names, telephone numbers, and functions of key department personnel involved in the DBE program and contracting decisions. A one-page diagram which flow-charts the major steps in the contracting and consultant selection process should also be included.
- The certification pool of the state program should be expanded to include D/M/WBEs certified by the Governor's SMBA Office.
- Outreach efforts should be expanded to increase the number of certified DBEs.

### **DBE Program**

- Introduce legislation to change the State Set-Aside Program to a Goals/Set-Aside Program.
- Include Highway and Bridge Preconstruction contracts in the federal DBE program.
- Require the Building Engineer to maintain and track prime and subcontractor utilization on Construction and Renovation contracts.
- Provide a semi-annual report to the SCDOT Commission summarizing DBE utilization as prime and subcontractors in the state and federal DBE programs.