

STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION

TARGETED GROUP DESIGNATION FOR  
DEPARTMENT OF TRANSPORTATION (Mn/DOT)  
NON-FEDERAL HIGHWAY CONSTRUCTION  
CONTRACTING & SUBCONTRACTING

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; Minnesota Department of Transportation (“Mn/DOT 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 Mn/DOT’s contracting with businesses owned by specific minority groups or women and the representation of those businesses within all businesses in the contracting category.

6. The Mn/DOT Study found that Mn/DOT engages in outreach and training programs, monitors utilization of women- and minority-owned businesses, encourages small business participation in contracting, and includes anti-discrimination language in its construction proposals.

7. The Mn/DOT Study quantitatively evaluated the contracting practices of Mn/DOT in key areas by analyzing Mn/DOT’s payment data from January 2002 through December 2007, and by reviewing and analyzing Mn/DOT’s contracting files.

8. The key areas that the Mn/DOT Study addressed were the non-federal highway construction prime contract and construction subcontract industries.

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

10. The Mn/DOT Study considered a firm available if it had the capacity to have worked on Mn/DOT contracts and was willing to do so.

11. The Mn/DOT Study found that statistically significant disparities exist in utilization of businesses owned by African Americans in both categories examined.

12. The Mn/DOT Study found that statistically significant disparities exist in utilization of businesses owned by Asian Americans in both categories examined.

13. The Mn/DOT Study found that statistically significant disparities exist in utilization of businesses owned by Hispanic Americans in both categories examined.

14. The Mn/DOT Study found statistically significant disparities in the utilization of businesses owned by American Indians<sup>1</sup> in both categories examined.

15. The Mn/DOT Study found statistically significant disparities in the utilization of businesses owned by nonminority women in both categories examined.

16. The Mn/DOT 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.

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

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<sup>1</sup> In this document, the term “American Indian” is used in lieu of the term “Native American” used in the Mn/DOT Study.

Data on Disabled Business Owners (“Supplement”), dated February 1990, the contents of which are 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 Mn/DOT’s utilization of businesses owned and operated by specified minority groups and women in comparison to their availability for contracting as shown on the Table of Groups Experiencing Disparity in Minnesota Department of Transportation Contracting, attached as Exhibit A.

4. Statistical disparity exists in Mn/DOT’s utilization of businesses owned and operated by persons with a substantial physical disability.

5. 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 inclusion of these businesses in the targeted group procurement program.

6. Mn/DOT has considered and undertaken race-neutral measures to increase minority business participation in its 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 Mn/DOT's non-federal highway construction contracting and subcontracting as shown on Exhibit A.

2. Small businesses owned by persons with a substantial physical disability are designated as targeted group businesses for purposes of Mn/DOT's non-federal highway construction contracting and subcontracting as shown on Exhibit A.

3. This designation applies to the Minnesota Department of Transportation pursuant to Minn. Stat. § 161.321, subd. 1 (d).

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

June 6, 2011

Date

  
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Spencer Cronk  
Commissioner of Administration

**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION**

**TABLE OF GROUPS EXPERIENCING DISPARITY IN  
MINNESOTA DEPARTMENT OF TRANSPORTATION NON-FEDERAL  
HIGHWAY CONSTRUCTION CONTRACTING & SUBCONTRACTING**

(Based on the 2009 Disparity Study)

Groups eligible as Targeted Group Businesses are marked with an X

<b>GROUP</b>	<b>PRIME CONTRACTS</b>	<b>SUBCONTRACTS</b>
African American	X	X
American Indian	X	X
Asian American	X	X
Hispanic American	X	X
Nonminority Women	X	X
Disabled	X	X

June 6, 2011