

Disparity Study - 11/19/09

MINNESOTA DEPARTMENT OF ADMINISTRATION

DISPARITY STUDY 2009

PUBLIC MEETING

November 19, 2009

Metro Counties Government Center

2099 University Avenue West

St. Paul, Minnesota 55104

Met, pursuant to Notice, at six o'clock in the evening.

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APPEARANCES:

VERNETTA MITCHELL, MGT Senior
Consultant, 2123 Centre Pointe Boulevard,
Tallahassee, Florida 32308.

FRED SEAMON, MGT Senior Partner,
2123 Centre Pointe Boulevard, Talahassee,
Florida 32308.

VINCE EAGAN, MGT Legal/Economic
Advisor, 2123 Centre Pointe Boulevard,
Tallahassee, Florida 32308.

ALSO PRESENT: Dorothy Lovejoy,
Dept. Of Administration

WHEREUPON, the following proceedings
were duly had and entered of record, to wit:

1 MR. SEAMON: Good evening. My name is
2 Fred Seamon. I'm a senior partner with MGT of
3 America, Inc., and served as the partner in
4 charge for the disparity study. With me is
5 Ms. Vernetta Mitchell, who served as the project
6 director for the disparity study, and Dr. Vince
7 Eagan, who served as the legal expert and
8 technical advisor to the study. You'll be
9 hearing from the two of them most of the
10 evening.

11 For the past year, MGT of America has
12 been conducting a disparity study for the
13 Minnesota Department of Administration and five
14 other agencies. Those agencies were the
15 Minnesota Department of Transportation, Met
16 Council, Metropolitan Airports Commission,
17 Metropolitan Mosquito Control and Metropolitan
18 Sports Facilities Commission.

19 And before we move into our
20 presentation, I want to say you cannot conduct a
21 study of this magnitude and importance without a
22 lot of cooperation and support. And I want to
23 publicly thank Dorothy Lovejoy for all of the
24 assistance that she's given us, as well as the
25 staff in the other five agencies that facilitated

1 MGT getting the study completed.

2 What we're going to do this evening,
3 I'm going to spend a few minutes talking about
4 MGT of America, to give you a very quick overview
5 of who we are; spend some time talking about the
6 disparity study objectives, which were extremely
7 important in terms of framing the study; and then
8 we'll move to talking about the legal guidelines
9 and the methodology that also guided how the
10 study was conducted. And from that we'll spend
11 some time talking about the background and key
12 findings and recommendations, then leave some
13 time for questions and comments. So that's what
14 we intend to do in the time that we spend with
15 you this morning.

16 Who is MGT of America. MGT is a
17 national management consulting and research
18 firm. It's headquartered in the Tallahassee
19 office. The disparity study was conducted out of
20 our Tallahassee office.

21 We've been in business a little over 34
22 years, got started in the disparity study
23 business right after Croson vs. Richmond, a
24 decision rendered in 1989. In fact, we are the
25 most experienced disparity study research firm in

1 the country. We've conducted well over 120
2 disparity studies all over.

3 We do primarily public sector
4 consulting work. As you'll see on the screen
5 there, we work all over the country. We've got
6 offices across the country.

7 There were five primary objectives
8 which guided this study. One of those objectives
9 was to examine what, if any, barriers may have
10 resulted in disparities in the utilization of
11 available minority-owned, women-owned and
12 targeted-group business enterprises.

13 The second objective was to identify
14 from the most accurate sources available --
15 sources the availability of M/WBE and TGBs that
16 are ready, willing and able to do business with
17 each of the governmental units in the relevant
18 market areas, and those governmental units are
19 those six agencies that I mentioned earlier.

20 And then analyze state-funded
21 contracting and procurement data of the
22 Department of Administration and Transportation
23 and the non-federal funded contracting and
24 procurement data of each of the Metropolitan
25 agencies to determine their respective

1 utilization, as well as each of the governmental
2 units utilization as a whole of M/WBEs and TGBs.

3 And then to determine the extent to
4 which any identified disparities in the
5 utilization of available M/WBEs and TGBs by each
6 of the governmental units might be impacted by
7 discrimination.

8 And then, finally, recommend programs
9 to remedy the effects of any discrimination
10 identified and to reduce or eliminate any other
11 marketplace barriers that adversely affect the
12 contract participation of such M/WBEs and TGBs.

13 These objectives were very, very
14 important in that they framed how we conducted
15 the study. The objectives framed our
16 methodology. The objectives framed the
17 activities that were conducted by disparity study
18 research team in getting this project done, so
19 extremely important in that regard.

20 With that, we're going to move right
21 into the rest of the presentation. Dr. Eagan
22 will talk about the legal guidelines and
23 methodology that were very, very important in
24 conducting the study. Dr. Eagan.

25 DR. EAGAN: I'm just going to talk

1 about this very briefly, just to set a context
2 for the study. These studies are driven by a
3 Supreme Court decision called Richmond v. Croson,
4 which is twenty years ago now. And the basic
5 idea is if you're going to have a program that
6 involves race and gender in public contracting,
7 you have to have a compelling interest; that is,
8 you have to identify some problem for that, and
9 then your remedy has to fit that problem.

10 Interestingly enough, in the case law
11 since that decision some lower courts have found
12 that even if the agency itself didn't have a
13 problem, if there were problems in the private
14 sector that are somehow linked to that agency,
15 that could justify the use of race and/or gender
16 in public contracting.

17 And we were involved recently in a case
18 in North Carolina, H.B. Row vs. North Carolina
19 DOT, where there was, really, no disparity in the
20 agency itself, its own spending, but the private
21 sector evidence that was marshalled for that
22 study was sufficient, in the court's opinion, to
23 identify discrimination in the relevant
24 marketplace. And the Court upheld the program of
25 the North Carolina DOT on their state-funded

1 projects, which we think was a significant
2 ruling. It was actually the only time you had a
3 favorable decision in the Fourth Circuit on an
4 affirmative action program in twenty years down
5 there. So the point is that one can find
6 evidence to justify these initiatives.

7 The second aspect of the legal
8 guidelines is that even if you identify a
9 problem, you're remedy has to be narrowly
10 tailored; it has to fit the problem. You can't
11 simply have a study and do whatever you want to
12 do to guide that study. If you have goals, they
13 have to be linked to some reasonable measure of
14 availability. The program has to be flexible.
15 You have to take into consideration your burden
16 on third parties, particularly on non-minority
17 contractors. And, most significantly, you have
18 to take race and gender-neutral efforts
19 seriously. You have to sort of begin with those
20 and give priority to those efforts, even if you
21 supplement those with race- and gender-conscious
22 efforts.

23 The methodology in this study, there's
24 a lot of things, a lot of different kinds of
25 analysis in it. We looked at utilization and

1 availability, looked at disparity between the
2 firms that are utilized and available. There was
3 controls for the capacity of firms. There was a
4 lot of anecdotal analysis, qualitative analysis
5 from public hearings and survey evidence. And
6 then we have findings, commendation and
7 recommendations, which include a number of best
8 practices from other agencies around the country,
9 which may or may not provide a menu of options
10 for the agencies here in Minnesota.

11 And with that, Vernetta is going to
12 just give some highlights of the findings. There
13 were a lot of agencies, so there's a lot of
14 data. There's six different reports, and we're
15 simply highlighting some of the utilization
16 findings.

17 MS. MITCHELL: Good evening and thank
18 you. Just a brief background of how we framed
19 the study. As Dr. Seamon mentioned earlier,
20 there were six agencies included in the study:
21 The Department of Administration, Department of
22 Transportation, Metropolitan Council, the
23 Metropolitan Airports Commission, Metropolitan
24 Mosquito Control, the Metropolitan Sports
25 Facilities Commission.

1 There were three different study
2 periods that we looked at. Each agency had data
3 related to certain time periods. So the study
4 period for Administration, Transportation,
5 Mosquito Control and Sports Facility was
6 January 1, 2002 to December 31, 2007. And that
7 is the time frame that we collected procurement
8 data, availability data, for that time period.

9 For the Airports Commission, their
10 study period, the data that we looked at there,
11 was a fiscal year of July 1, 2004 to June 30,
12 2007. And for Metropolitan Council the time
13 period that we looked at was January 2003,
14 January 1, of course, 2003 to December 31, 2007.

15 There are five different business
16 categories that we looked at as we collect data,
17 the procurement and contracts data from each of
18 these agencies. We look at construction;
19 architectural engineering; goods, equipment and
20 supplies; professional services and other
21 services.

22 We also analyze prime contracting
23 utilization and availability for all the business
24 categories that I mentioned. And we only looked
25 at subcontracting for construction in Admin.,

1 Department of Transportation, Met Council and
2 MAC. And we do that because those are the areas
3 where most of your participation has the
4 opportunity to be noted there, in those agencies
5 where they have high construction dollars.

6 We also focus on availability, where we
7 had better information. The vendor information
8 from each of the agencies' database, as well as
9 census information for the relevant marketplace.

10 Utilization findings. So how much
11 money did each of the agencies spend and what was
12 the outcome of our analyses. We'll start with
13 administration. For minority women business
14 enterprises, the prime contracts -- Prime
15 contracts are direct contracts with the agency;
16 they're not subcontract dollars, but direct
17 contract or purchase orders with the agencies --
18 59 M/WBE firms won prime contracts for
19 \$15 million, which is 3 percent of the total
20 spending for Administration.

21 33 M/WBE firms won professional
22 services. In Administration their department
23 includes architectural and engineering under the
24 professional services category, but you'll see
25 that broken out in some of the other agencies.

1 So that's why I said they're included with the
2 A&E, architectural and engineering.
3 \$10.63 million, 3 percent of the total spending
4 for that business category.

5 167 M/WBE firms won service contracts,
6 other service contracts for \$15 million,
7 8 percent of the total spending for other
8 services.

9 And 289 M/WBE firms won contracts or
10 purchase orders for goods, equipment and supplies
11 for \$19.82 million, 3.95 percent of the total
12 spending for goods, supplies and equipment for
13 Administration.

14 For the Department of Transportation,
15 the study was only conducted on state-funded
16 projects. There are no federal dollars included
17 in our study. There are no stimulus dollars
18 included in our study. These are only
19 state-funded dollars.

20 There were nine M/WBE firms that won
21 prime construction contracts for \$12.77 million,
22 2.20 percent of the total dollars spent for
23 state-funded construction projects, which is just
24 your horizontal construction projects for
25 Mn/DOT.

1 The Airports Commission prime
2 utilization, two M/WBE firms won prime
3 construction contracts for \$1.86
4 million, .63 percent.

5 No M/WBE firms won the architectural
6 and engineering contracts.

7 One M/WBE firm won professional
8 services contract for \$11,000.

9 Three M/WBE firms won other services
10 contracts for \$11,00, 11,858.

11 Eight M/WBE firms won purchase orders
12 or contracts for goods, supplies and equipment
13 for a contract value of \$1.73 million or
14 12 percent of their total spending for goods,
15 supplies and equipment.

16 For the Metropolitan Council, 14 M/WBE
17 firms won prime construction contracts for
18 \$528,968 or .15 percent of their total spending
19 for construction. Again, for Met. Council we're
20 only looking at state-funded projects.

21 Six M/WBE firms won prime architectural
22 and engineering contracts for \$334,691,
23 2.21 percent of their total spending.

24 Two M/WBE firms won professional
25 service contracts for \$17,987, .08 percent of

1 their total spending.

2 15 M/WBE firms won other services
3 contracts for 1.39 million, 3.08 percent of their
4 total spending.

5 And nine M/WBE firms won contracts or
6 purchase orders for goods, supplies, equipment in
7 total for \$271,990, 1.61 percent of their total
8 spending.

9 Mosquito Control District, there were
10 no M/WBE firms that won prime construction
11 projects or architectural and engineering
12 contracts.

13 Four M/WBE firms won professional
14 services contracts for \$5,391 or 1 percent of
15 their total spending.

16 Three M/WBE firms won other services
17 contracts for 52,239, .49 percent of 1 percent.

18 Three M/WBE firms won goods, equipment
19 and supplies purchase orders or contracts for
20 \$20,658 or 2.39 percent of their total spending.

21 For the Sports Facilities Commission,
22 two M/WBE firms won prime construction contracts
23 for \$1.3 million, 11.70 percent of their total
24 spending.

25 No M/WBE firms won architectural

1 contracts.

2 Four M/WBE firms won professional
3 services contracts for \$75,428, 1 percent of the
4 total spending.

5 Two M/WBE firms won other services
6 contracts for \$15,562, .89 percent of their total
7 spending.

8 And four M/WBE firms won purchase
9 orders or contracts for goods, equipment and
10 supplies for 43,969, .30 percent of their total
11 spending.

12 Okay. The four agencies that I talked
13 about where we did subcontracting analyses for
14 construction only, for construction spending.
15 Administration, four M/WBE firms won construction
16 subcontracts for a little over two million
17 dollars, 1.73 percent of their total spending for
18 a subcontracting of M/WBE firms for
19 construction.

20 Mn/DOT, again, looking at just
21 state-funded projects, five M/WBE firms won
22 construction subcontracts for 1.13
23 million, .71 percent of their total spending.

24 Metropolitan Council, one M/WBE firm
25 won a construction subcontract for \$24,500,

1 10 percent of their total spending for
2 subcontract dollars.

3 And the Airports Commission, again,
4 looking at just state-funded projects, 11 M/WBE
5 firms won construction subcontracts for
6 4.26 million, 12.54 percent of their total
7 subcontracting spending.

8 The anecdotal analysis, there were
9 several activities that we conducted for
10 anecdotal. We conducted telephone surveys, where
11 we completed 552 surveys of business owners who
12 were randomly selected from the state's vendor
13 list. We also conducted a public hearing, we
14 conducted four focus groups, and we also
15 conducted 65 personal interviews, one-on-one
16 interviews.

17 In the anecdotal, this is what we
18 usually classify as putting a face to the
19 numbers, where business owners, if you
20 participate in it, you know what I'm talking
21 about. Business owners get to say what barriers
22 they may face in trying to do business with any
23 of these agencies or attempting to do business
24 with any of these agencies.

25 Some of the major concerns. Once we

1 pull in all the anecdotal information, we look at
2 it, we analyze it and come up with some
3 calculations and percentages based on what the
4 responses were from the businesses.

5 There were several barriers in prime
6 contracting, again, direct contracts with the
7 agencies, that were identified, but I just picked
8 up the seven or eight that I have here that were
9 the highest number of barriers given, based on
10 the responses that we got from the firms.

11 The biggest concern was -- M/WBE firms
12 and non-M/WBE firms are also included in the
13 anecdotal. They found that the biggest barrier
14 that they have in doing business with the state
15 is competing against large firms. And the range
16 is between 30 and 37, because the questionnaire
17 is asked based on the agency that you most likely
18 do business with or have done business with. So
19 some of the -- one of the agency's had 30 percent
20 answered this, another agency had 37 percent. So
21 between 30 and 37 percent of our 552 firms stated
22 that this was a -- the major barrier for them.

23 Some of the other barriers, selection
24 process. How did the agencies select the firms
25 they're going to use. Contracts too large.

1 Restrictive contract specifications, how they're
2 written and the way that they eliminate some
3 firms unnecessarily. Rigid bid specifications.
4 Limited knowledge of policies and procedures for
5 each of the agencies and their procurement
6 processes. Time allotted to prepare bids and
7 quotes, time frame that the firm may find out
8 about the bid versus when it was originally
9 advertised. Performance bond requirements and
10 pre-qualification requirements. And there are
11 more that were not -- like financing and things,
12 lack of knowledge of your trade, lack of
13 personnel with some lower percentages that were
14 considered barriers.

15 For the subcontracting, for those firms
16 that responded to the anecdotal surveys who are
17 subcontractors, more than 20 percent of the M/WBE
18 firms responded strongly that they agree that
19 there's an informal network of firms that limits
20 their ability to obtain work in both the private
21 sector and the public sector.

22 31.57 percent of the M/WBE respondents
23 strongly agreed or agreed that prime contractors
24 change their bidding or their subcontracting
25 process when there are no targeted group business

1 goals on a project. So if the project has goals
2 on it, then they do one thing; but if the project
3 doesn't have goals, then they completely change
4 their process. So 31.57 percent of the firms
5 that responded found that to be a barrier.

6 To continue, Dr. Eagan talked a lot
7 about the private sector -- or a little bit about
8 discrimination in the private sector.

9 11.9 percent of the M/WBE firms that responded
10 reported experiencing discriminatory behavior
11 from private sector organizations. The group
12 with the highest percentage reporting behavior in
13 the private sector are non-minority women at
14 8.3 percent. So the non-minority women group,
15 when asked the question on the survey, reported
16 that they faced the biggest challenges in
17 discrimination in the private sector.

18 The utilization of M/WBE firms on
19 private sector commercial construction projects
20 in the city of St. Paul was significantly lower
21 and generally below most measures of M/WBE
22 availability in the marketplace. Over the study
23 period, and there are three that I talked about
24 earlier, M/WBEs won less than 2 percent of
25 private sector commercial construction

1 subcontracts, and we're talking private sector.

2 Two recent studies using the Public Use
3 Microdata Sample, what we refer to as PUMS, and
4 Current Population Survey, CPS, data found
5 significly (sic) -- significantly -- significant
6 -- statistically significant -- say that three
7 times fast; I can't even read it -- statistically
8 significant disparities in earnings from and
9 entry into self-employment for women and
10 minorities in the state of Minnesota. Get that
11 one out of the way. That's horrible.

12 Dr. Eagan is going to talk about the
13 recommendations.

14 DR. EAGAN: Okay. There's a wide
15 number of recommendations, I just want to talk
16 about a few of them. As I mentioned before, you
17 have to take race-neutral measures seriously in
18 implementing these programs or making any
19 programmatic changes. A number of agencies have
20 used aggressive forms of small business programs
21 to promote the utilization of women- and
22 minority-owned businesses.

23 Vernetta ran the program in the city of
24 Charlotte, which actually got higher utilization,
25 in some respects, under the SBE program than they

1 did under the M/WBE program because they were
2 quite aggressive with how they implement it.

3 The state of North Carolina sets aside
4 contracts for small business, contracts under
5 \$500,000 just for competition by small
6 businesses. A number of agencies do that. So
7 there's a range of approaches. We list about
8 12 different things that agencies do with small
9 business programs.

10 On the race and gender conscious
11 element of this, we think there's a factual basis
12 in the data presented for aspirational M/WBE
13 goals. That means that you sort of set a broad
14 goal, which is sort of a benchmark that is based
15 on some reasonable measure of availability. It
16 doesn't have to be exactly at that measure of
17 availability.

18 And then you use a combination of race-
19 and gender-neutral and race- and gender-conscious
20 means to reach that. We'll have some slides
21 about the groups that we feel, based on the data
22 in the study, qualify for targeted group
23 participation.

24 We also talked about other forms of
25 small business programs that are somewhat race

1 conscious. The HUBZones program. The federal
2 HUBZones program has set aside bid preferences,
3 subcontracting goals for firms located in
4 disadvantaged neighborhoods and disadvantaged
5 communities. And those firms tend to be,
6 70 percent nationally and something like that in
7 Minnesota, firms owned by women and minorities.

8 We also felt that there was a basis for
9 having subcontractor goals, there's a factual
10 basis, both in the evidence from the agencies
11 themselves and from the evidence in the
12 marketplace as a whole. We saw that in the city
13 of St. Paul, which has a goals program, that
14 there was clearly much more availability in the
15 marketplace, as evidence by the utilization on
16 their projects, where they had more affirmative
17 efforts at the subcontracting level than there
18 was for the state agencies.

19 We think such a goals program, a
20 priority for it, should be in the Twin Cities
21 area, where there's the highest relative
22 availability there. And that would make it a
23 more narrowly tailored program the more you focus
24 where there are available firms.

25 We also feel that such a goals program

1 itself should be narrowly tailored; that is, the
2 goals should not operate as a quota, but,
3 instead, sort of ensuring that prime contractors
4 solicit and negotiate in good faith with M/WBE
5 subcontractors. And that was the kind of program
6 that was upheld, again, by the state of North
7 Carolina on its state-funded spending.

8 We have a whole chapter or section of a
9 chapter on best practices, which includes some
10 race-neutral things, such as rotating vendors,
11 just as adjusting the size of contracts. The
12 city of Atlanta -- I live in the outskirts of the
13 city of Atlanta -- has a technique where they
14 sort of require joint ventures. It's technically
15 a race-neutral method. You simply have to joint
16 venture with somebody who doesn't look like you.
17 That's the policy.

18 And it's actually generated more
19 spending with M/WBEs than any other policy I've
20 seen in the United States. It's generated
21 hundreds of millions of dollars in spending with
22 M/WBEs, this sort of race-neutral joint venture
23 policy. So we talk about that.

24 We've seen a lot of other agencies, and
25 St. Paul does this, as well, extend their program

1 to economic development projects. That is, if an
2 agency is providing any kind of incentives to
3 private developers or tax incentives of any
4 nature, that part of that incentive is what is
5 your inclusion in the contracting that's part of
6 that. So we have discussion of that as well. So
7 that's just some of the highlights of the
8 recommendations, but there are quite a few
9 others.

10 This gets kind of lengthy, but
11 basically breaks down by each agency and each
12 procurement type, as required by statute, that
13 is, is there a basis for their inclusion and
14 targeted group incentives. And for most of them,
15 there is. And this was based on the broadest
16 measure, looking at disparity using the broadest
17 measure of availability, the most expansive
18 measure of availability.

19 But all the agencies have to consider
20 how they're going to treat this data. They're
21 going to think through the evidence and then come
22 up with their own policies in response to the
23 evidence that's presented.

24 UNKNOWN SPEAKER: (Inaudible.)

25 DR. EAGAN: This will all be posted on

1 the web, because it's so many -- I could kind of
2 go on forever. Buy and large, yes, with a few
3 exceptions for a few procurement types. But it
4 will be posted on the web and people can review
5 it from there. And I think at that point, we'd
6 ask for questions.

7 MS. MITCHELL: I do kind of want to
8 briefly go through this by each department and
9 agency that was included. One thing I think is
10 really important to note is each agency we
11 mentioned that was a part of this study has their
12 own report based on their dollars spent. In that
13 report they have a set of recommendations. So
14 the agencies have to look at the recommendations
15 that we made based on their utilization and
16 availability for what they do.

17 Some of those recommendations, the
18 agency will have to decide which ones they're
19 going to accept and which ones they may not want
20 to do yet. Some recommendations may be something
21 that the agency can do now. Some may be
22 mid-range, some may be long range, that may take
23 a couple years to put into place. Some may cost
24 money, some may not cost any money. So the
25 agencies really have to look at their

1 recommendations in their report and then come up
2 with their plan of how they're going to implement
3 some of these recommendations.

4 But when Vince was talking about just
5 where some of the measures of availability are,
6 based on what we found with all of the agencies,
7 the Department of Administration you see yeses,
8 meaning that there is disparity for the
9 particular minority or gender category in the
10 specific business category. We really have to
11 stratify that. Are Asian-American firms in
12 construction underutilized or overutilized, the
13 yeses meaning that they are underutilized; the no
14 meaning, no, they're not underutilized. So
15 there's parity there in their availability and
16 spending from the agency.

17 DR. EAGAN: Sometimes there was no
18 identified availability.

19 MS. MITCHELL: Or no identified,
20 absolutely. That's right. So you see a few noes
21 where there's no disparity or firms with no
22 identified in the availability or utilization in
23 the chart here for Administration.

24 For Department of Transportation, of
25 course, state-funded dollars, we just looked at

1 horizontal construction. The Department of
2 Administration, all of their other spending in
3 the business categories, professional services,
4 other services, goods and supplies all run
5 through the Department of Administration. So all
6 of their dollars from Mn/DOT are included in the
7 Admin. study. So we only analyzed the horizontal
8 construction state-funded dollars for Department
9 of Administration. And there are yeses for
10 underutilization in all of those categories.

11 The Metropolitan Council, there are two
12 noes there for construction subcontractors,
13 Asian-American subcontractors and Native American
14 architectural engineering. Again, remember the
15 noes could mean either there's no disparity or
16 there's no availability, meaning there are no
17 contractors that we could find that do this type
18 of work.

19 Airports Commission has a couple noes
20 in there, some in construction subcontracting, a
21 couple in professional services -- or one in
22 professional services and a couple in goods,
23 supplies and equipment.

24 Mosquito Control District we've got one
25 no. The Native American category is usually one

1 that we typically have a hard time finding
2 contractors, business owners in certain regions,
3 so oftentimes we'll end up having no utilization,
4 no availability in this case.

5 The Sports Facilities Commission,
6 Native American, Native American, again, for
7 architectural engineering and professional
8 services.

9 Okay. At this point in time -- we have
10 a court reporter just kind of making sure that we
11 transcribe this meeting because it is a public
12 meeting. So if you have questions, if you could
13 raise your hand, I'll call you, stand up, if you
14 wouldn't mind, and say your name, ask your
15 question and we'll be happy to answer it for
16 you.

17 MR. MOBLEY: My name is Mike Mobely. I
18 just want to get a copy of the study. Do you
19 have it on the website? And what is your website
20 address.

21 MS. MITCHELL: It will be on the
22 Department of Administration's website Monday,
23 and all six reports will be there.

24 MR. MOBELY: Okay. Thank you.

25 MS. CHANG: Ivy Chang, C-H-A-N-G. And

1 I want to know what do these departments want to
2 do about the disparity that occurs in the
3 Department?

4 MS. MITCHELL: Well, again, that's why
5 we wrote the recommendations. They're interested
6 because they commissioned us to do the study. It
7 will have to be up to each of the departments on
8 which recommendations, if any, that they
9 implement. And you'll just have to, if there's a
10 particular department or agency that you're
11 interested in, kind of follow to see what they're
12 going to do with the study.

13 Yes, sir.

14 DR. EAGAN: I should have recognized
15 Ivy, who worked on the study -- contributed to
16 working on the study.

17 MS. MITCHELL: Yes, sir.

18 MR. WOODS: Yes. My name is Robert
19 Woods. I just want to know what has been the
20 previous track record with these studies, in this
21 state specifically, with the Department of
22 Administration if it's done before? Or maybe you
23 could also expand on what some other states have
24 recently done with it.

25 MS. MITCHELL: Do you want to take that

1 one?

2 DR. EAGAN: Yeah. There have been
3 other studies done here in the state of
4 Minnesota, going back a couple decades, almost,
5 one internal. There was one done by an outside
6 consultant in 1999. So there have been other
7 studies here and other studies in the Twin Cities
8 area. I think there's one for the City of
9 Minneapolis which is being finished soon. We did
10 one for the City of St. Paul that came out about
11 a year ago. Not that many states actually do
12 these studies. A number of DOTs, Department of
13 Transportations, do studies, but not that many
14 states do them by themselves, the state itself.
15 So that, in and of itself, is admirable.

16 We're finishing a very large study for
17 the State of Texas, which will be coming out in a
18 few weeks, which has a very aggressive program,
19 very large numbers, billions of dollars in
20 spending with M/WBEs. Of course, it's a much
21 larger state and much larger M/WBE business
22 community down there.

23 I would say some of these studies don't
24 have any impact; they just go on the shelf with
25 all the other studies, to be perfectly frank. I

1 think the act of having a study, this is
2 obviously a self-serving comment, does encourage
3 the issue; that is, if procurement people know
4 that every five to ten years somebody is going to
5 be asking the question how inclusive were you and
6 what do the numbers show, someone from outside,
7 the contractors are going to be able to talk
8 about their opinions about the procurement
9 process, I think that, in itself, can stimulate
10 spending.

11 Back when these programs started a few
12 decades ago, when they just passed an ordinance,
13 there was not that much of a change in spending.
14 Once people looked at it one way or another, it
15 was either themselves reporting the numbers on a
16 regular basis or someone else looking at it,
17 that, in and of itself, raised spending.

18 It's interesting to note that the State
19 of California, when they decided to end all these
20 programs, the other thing they did was end
21 reporting on it. So not only are we going to end
22 it, we're not going to keep track of it anymore.
23 And, again, it's a self-serving statement, but I
24 think it's relevant.

25 MS. MITCHELL: Yes, sir.

1 MR. GALARNYK: My name is Timothy
2 Galarnyk, G-A-L-A-R-N-Y-K. I really don't know
3 for sure where to start. If I would try to keep
4 this on the positive note, I wouldn't be telling
5 the truth. I've been in the construction
6 industry since 1976, and I worked for a large,
7 large general contractor. And I've been involved
8 in the bidding process. And I've watched the way
9 contractors and the way government agencies
10 monitor and police this type of program. The
11 State of Minnesota-Department of Transportation
12 should be totally and completely ashamed of
13 themselves for not providing equal opportunity to
14 the minority- and female-owned businesses in this
15 state.

16 You're not going to have Native
17 American businesses come up because there is no
18 opportunity. Very little opportunity for
19 African-American businesses and Asian businesses,
20 and I've seen that.

21 Now, I'm a white fellow, middle aged.
22 Towards the younger side of the middle age, but
23 I've been in business for 30 years, in the
24 construction business. I'm not a contractor
25 anymore. I don't work for a contractor anymore.

1 And I bid one job about three years ago for the
2 Corps of Engineers as a small business, and the
3 contractor that got the job was a huge contractor
4 in the business of engineering. They didn't give
5 me a reason why. And I was the only small
6 business to bid on it. And it was a set-aside
7 for a small business.

8 When the state of Minnesota-Department
9 of Transportation makes a goal of 15 percent and
10 then there's this so-called good faith effort,
11 that doesn't mean anything. A good example is
12 494, the design-build project on 494 a few years
13 back, when the contractor simply didn't meet the
14 goal and was told, you'll meet the goal. And at
15 the end of the job, they simply were given a
16 penalty. As a matter of fact, the DBE office of
17 the Minnesota Department of Transportation
18 recommended against giving that contractor the
19 job; and that was overruled by the then deputy of
20 commissioner of Transportation, who's no longer
21 there, who gave them the job anyway.

22 But the second contractor met the
23 goal. This doesn't mean anything, this goal and
24 this -- I hope your study means something and I
25 hope it gets some action, but it's not going to

1 happen with the current administration. I don't
2 care if it's a Republican administration or a
3 Democratic administration. Until people have the
4 idea that minority participation is necessary,
5 not as a goal but as business development, to
6 increase competition.

7 How many bridge building contractors
8 sit in this room right now. There aren't any.
9 How many painting contractors. There aren't
10 any. I bet you most of you do, like, trucking.
11 You know what that is? That is what they call --
12 Is this on the record? That's the shit work.
13 Structural steel erection. You know why
14 contractors - You know why minority-owned
15 businesses and women-owned businesses do that?
16 Because there's no general contractor in their
17 right mind that wants that kind of work because
18 it's too damn dangerous -- excuse me -- too
19 hazardous.

20 The insurance rates of a structural
21 steel erector are some of the highest rates in
22 the construction industry. Why do I want that
23 risk. How about landscaping, a little bit of
24 erosion control, put a few rocks in place.

25 What do you do -- What's your

1 business?

2 UNKNOWN SPEAKER: Professional
3 services, project management.

4 MR. GALARNYK: You get a lot of work
5 with the DOT?

6 UNKNOWN SPEAKER: No.

7 MR. GALARNYK: That's right. What's
8 your work?

9 UNKNOWN SPEAKER: Me?

10 MR. GALARNYK: Yeah.

11 UNKNOWN SPEAKER: An attorney.

12 MR. GALARNYK: You've got a lot of
13 work, right?

14 UNKNOWN SPEAKER: If you say so.

15 MR. GALARNYK: I can tell you there's
16 no bridge building contractors in this room and I
17 can tell you there's no pile driving contractors
18 in this room, and there's probably -- there's a
19 lot of trucking contractors, but who the hell
20 wants trucking as the general contractor. It's
21 too much insurance. It's too big of a deal.
22 There's drug testing, you've got to take care of
23 equipment, it's pretty high risk, and then they
24 beat the hell out of you on prices anyway.

25 Negotiate with a subcontractor?

1 General contractors don't have to negotiate after
2 they're the low bidder, but the subcontractors
3 have to negotiate with the general contractor in
4 order to get the work. How ridiculous is that.

5 And then you'll have general
6 contractors that say, give me your quote for the
7 piping and underground work, or, give me your
8 quote for the grading and stuff like that and
9 we'll take a look at it. And then they'll take
10 their numbers -- And I'm telling you, I've seen
11 it, I've been there. They'll take their numbers
12 and they'll adjust their numbers downward so that
13 you guys aren't low bidder. And they'll put the
14 rest of the money in something that nobody gave a
15 quote for or mobilization or general conditions.
16 And then they'll show you, see, our number beat
17 your number; see, here it is. And I've seen
18 that. And I've been part of that whole deal.

19 I've been in the bidding room. That's
20 when they used to be sitting in hotel rooms, and
21 that's when all the subcontractors came in and
22 give you the number. And we had minority people
23 come into our office or our room and say, what
24 can we do to help you guys out so that you meet
25 the goal. I don't know what you do. What do you

1 do. That's back in the early days.

2 Now if you gave me your number to drive
3 pile and I drive pile as part of my regular
4 general contracting firm, I'm going to tell you
5 this, you can give me the piling for free and you
6 still would be low.

7 This is the facts. This is the way it
8 is. And the only way for it to work is if Mn/DOT
9 will say, we want not this idea of good faith
10 effort, which is good faith bullshit; we want
11 good faith effort. That means if the project
12 says we want 15 percent minority participation,
13 then either you get it or we're not awarding the
14 job. Then you don't have all this yes-no or the
15 yeses in the disparity. It's never going to
16 change unless we get the DOT, the Department of
17 Administration, the City of St. Paul and any
18 other contracting agency to say, we are -- we
19 don't want -- I mean, I understand the certain
20 thing about quotas, I understand that. And
21 that's too bad that that's what it ends up being
22 called, but it isn't. It should be called equal
23 opportunities for construction work.

24 Why Isn't it happening. Because the
25 administration isn't allowing it to happen. I

1 don't care if it's the Obama administration or
2 Carter or Clinton or Bush or anybody else. They
3 don't make those decisions.

4 The administrator of the DOT, 2004,
5 totally ignored his own DEE officer and awarded
6 the contract to the contractor that didn't
7 comply. And at the end of the day, at the end of
8 the job, they still didn't comply even though he
9 had an order to comply. And what did they give
10 them? A penalty. What was the penalty? About
11 \$100,000, 150,000. What kind of a penalty is
12 that on a \$140 million job.

13 I'm a young guy. I've watched the
14 trouble that you people have had, that women and
15 minorities and Asians and Native Americans have
16 had trying to get work. Why do I care? It's not
17 fair. It's not right. The whole idea of the
18 program is to make sure that there are equal
19 opportunities for employment for everyone. And
20 the big get bigger and the small don't even get a
21 chance. Don't even try to start a new
22 construction company today because you ain't
23 gettin' any work. You're not going to be low, by
24 the way.

25 UNKNOWN SPEAKER: Thank you.

1 MR. GALARNYK: Can I leave now?

2 UNKNOWN SPEAKER: What is your
3 suggestion?

4 MR. GALARNYK: 15 percent means
5 15 percent. If that's what the requirement is on
6 the job, it's 15 percent. If the low bidder
7 doesn't have 15 percent, they're not going out on
8 that job, go to the next bid. And if all of them
9 don't have it, then you know what? We're
10 rejecting the job; we're going to reject the bids
11 and set it off for the next time. These general
12 contractors, they'll get the message damn quick
13 if they don't get any work.

14 The general contractor that I used to
15 work for, doesn't make a difference who they are,
16 the owner set his daughter up as a steel
17 erector. You don't think that happens today.
18 Come on.

19 Yes, sir.

20 UNKNOWN SPEAKER: Sir, can we let some
21 other people ask some questions? I appreciate
22 the commentary, but I'd like to get other people
23 to talk too.

24 MR. GALARNYK: Well, that's why I
25 waited until the end.

1 UNKNOWN SPEAKER: Thank you, sir.

2 DR. EAGAN: I would say that your
3 vantage point was very helpful, because quite
4 often when people are on the other side, they
5 don't really know what's going on on the inside
6 of some of these transactions. So, actually, I
7 found those comments extremely useful.

8 MR. GALARNYK: I was interviewed in the
9 study. I was interviewed with regard to whoever
10 conducted the study, and they told me that they
11 were going to contact me again so I can give them
12 more information. That was it. I have not been
13 contacted anymore.

14 MS. MITCHELL: Young lady in the back
15 and then you right there in the green sweater.

16 MS. WILLIAMS: My name is Alessandra
17 Williams, A-L-E-S-S-A-N-D-R-A, Williams.
18 Recently the Minnesota Department of
19 Transportation decreased the DBE goals from
20 15 percent to 9 percent. And it seems like these
21 kinds of decisions are just made behind closed
22 doors. So I'm trying to figure out -- Because in
23 your study it showed these groups and categories
24 are being underutilized, but Mn/DOT is still
25 making the decisions behind closed doors. So

1 what's it going to take for these agencies to do
2 things differently?

3 MS. MITCHELL: Let me just first say
4 that we did not study the DBE program. The DBE
5 classification is for your federally-funded
6 projects for the airport and Mn/DOT. And we did
7 not touch the federal-funded projects at all. So
8 the federal government does require them to set
9 annual goals based on their utilization and
10 spending. And if they drop their goals, which
11 we're not aware of that because we didn't look at
12 federal spending, we're not aware of that.

13 And right now Mn/DOT doesn't have goals
14 for their TDD program, I don't believe. I don't
15 believe they have goals for TDD. One of our
16 recommendations was based on the findings of the
17 study, is for them to set subcontracting goals
18 for horizontal construction on state-funded
19 projects. And there's a formula that goals with
20 that and a whole other process in goal setting.

21 My recommendation would be to contact
22 the program administrator, contact the
23 legislator, the executive director over Mn/DOT,
24 and express your interest in wanting to make sure
25 that something is done with the study, first of

1 all, and follow through your legislative process
2 that way.

3 MS. WILLIAMS: Right. And if they're
4 making those decisions with DBE goals, doesn't
5 that say something about the DBE priorities. So
6 we can make recommendations about what they
7 should do in terms of adding goals for
8 subcontractors, but their priorities that they're
9 setting are something that's very different.

10 MS. MITCHELL: Each agency's priorities
11 is based on what their focus is for the agency.
12 And, like I stated a few minutes ago, the
13 recommendations that we make are
14 recommendations. The agencies have several
15 options. They could not accept any of the
16 recommendations and decide not to do anything,
17 which we hope is not the case.

18 The agency could take five of the
19 20-plus recommendations we made, they could take
20 two. They could have some they could implement
21 immediately because they have everything in place
22 and there's some that could take a year to put in
23 place because that may need personnel, software
24 or something. Some may cost money, some may not
25 cost money.

1 So if they're going to implement the
2 recommendations and administer a program, they
3 really have to prioritize the recommendations
4 based on where they are and what can they move
5 forward with.

6 Yes, ma'am.

7 MS. BUSS: My name is Jamie, J-A-M-I-E,
8 Buss, B-U-S-S. I'm interested in, as many people
9 are, what's going to happen now in the political
10 process. Are there any elected officials in the
11 room, commissioners, assistant commissioners?
12 Can you talk to us about how and in what formats
13 you're presenting the results to the people who
14 commissioned it?

15 MS. MITCHELL: Dorothy Lovejoy was the
16 project manager from the Department of
17 Administration that oversaw the overall study,
18 and then we had project managers in each one of
19 the agencies. Dorothy is going to be taking
20 charge of making sure that the agencies get their
21 reports. And it's really -- Dorothy, correct me
22 if I'm wrong -- up to each of the commissioners
23 of that agency to determine how they're going to
24 finish it.

25 MS. BUSS: And have you met with any of

1 those commissioners yourself?

2 MS. MITCHELL: No, I have not met with
3 any of them. I've worked just directly with the
4 project managers of each of the agencies.

5 MS. MITCHELL: Yes.

6 MS. PRZYMUS: My name is Nancy Przymus,
7 P-R-Z-Y-M-U-S. I spent 25 years in government
8 procurement evaluating bids and proposals that
9 all of you would submit. And now I help small
10 businesses get government contracts, as best I
11 can. So on a daily basis I ram my head against
12 this wall on behalf of small minority- and
13 women-owned businesses.

14 And my question is about your HUBZone
15 inclusion in this study. And more pointedly, I
16 have found that the HUBZones, and this is
17 anecdotal, in the Twin Cities to include places
18 like where 3M has their headquarters. A
19 Honeywell plant in northeast Minneapolis has a
20 HUBZone designation, but it stops right where the
21 really poor part of northeast starts and where
22 the small businesses can afford to located.

23 And anecdotally I have found, in both
24 of those instances that I point to, that right
25 next to these big plants are cemeteries. And, of

1 course, cemeteries are private property, but they
2 produce no income. And these HUBZones have been
3 set up where the great big corporations are right
4 next to these cemeteries. Has anybody done a
5 study about how the HUBZones have been assigned?

6 And if we're going to start to try to
7 give more contracting to HUBZone areas, they are
8 largely exclusive, in my experience in the last
9 year and a half that I've hung out my own
10 shingles, of where most minority- and women-owned
11 businesses and small businesses exist.

12 I think there's got to be a redirection
13 and a closer look at where those HUBZone lines
14 are drawn. It appears to me, this is the last
15 thing I'll say, that those HUBZones were drawn a
16 long time ago or were drawn around areas where
17 major corporations, who don't need a HUBZone
18 designation, exist. And we need to look at that
19 too. Have you done any study of that?

20 DR. EAGAN: That's an interesting
21 comment. I would say a couple of things about it
22 and that may be true here in Minnesota. What we
23 did look at was the composition of HUBZones in
24 the state of Minnesota, and the majority of them
25 were owned by women and minority.

1 The HUBZone program, as well, is
2 limited to small businesses, the federal
3 HUBZone. Now, a lot of states have something
4 similar. They'll have an enterprise zone which
5 may allow big corporations to get tax breaks from
6 that and that may be drawn the way you're talking
7 about. And a lot of big corporations take much
8 more advantage of state enterprise zones. But
9 the federal HUBZone program is limited to small
10 business, as defined under the federal rules.

11 MS. MITCHELL: You and then you and
12 then you.

13 MR. CORRIGAN: Jeremy Corrigan,
14 C-O-R-R-I-G-A-N. One problem that we've had as a
15 business, my wife and I, is that the goods we
16 provide that the State of Minnesota, several
17 agencies, DOT, DNR, Mosquito Control District,
18 the goods that they would purchase that we would
19 supply is bought through a contract, and that's a
20 five-year contract, a two-year with a three-year
21 extension. The individual that wrote that
22 contract is basically my competitor, and he is
23 the only competitor I have in the state of
24 Minnesota.

25 He wrote that contract about 15 years

1 ago, when he was still doing what he does to this
2 day. And that contract, I've gone over it many
3 times and it's coming up here in a couple years.
4 And as a small business, woman-owned business, I
5 don't see how I can bid on that contract and
6 actually get it because of the way it was written
7 and the -- and who wrote it specifically targeted
8 so that he gets it every single time it comes up
9 and there's no way anybody else can get it.
10 That's a major problem we face out there. And
11 they're a huge corporate America. They're a
12 \$9 billion a year company that's not even based
13 out of the U.S.; they're based out of Canada.

14 That's just one of the problems we face
15 and I don't know how to change that. The
16 contract is administered through the admin.
17 offices, and I just don't know how to even
18 approach them to change that because it is how it
19 is.

20 MS. MITCHELL: Your comment mirrors 17
21 to 21 percent of the people in the survey, of
22 restrictive contract specifications. So you're
23 not the only one in your particular field that is
24 running into that same barrier.

25 DR. EAGAN: Competing with large firms,

1 selection process.

2 MS. MITCHELL: So you've got the three,
3 competing against large firms, selection process,
4 as well as the contract specifications. The
5 anecdotal is really important for an agency
6 because we hear testimony like this. And in the
7 report, when you go to the website and look at
8 the report, there's an entire chapter of
9 anecdotal comment. And we have very similar
10 comments to what you said, that your competitor
11 has written the specification and then turns
12 around and puts it out for bid and then, of
13 course, who wins it. That comment is mentioned
14 several times in the anecdotal.

15 And we do that because the numbers are
16 just numbers. They just state the numbers, but
17 we don't understand what's behind those or what's
18 driving those, and that's where the anecdotal
19 comes in. So the intent is that when we hear
20 that comment, we regurgitate that right back to
21 the agencies and say, here's where your bidders,
22 both minority and non-minority, are saying is
23 restricting them from competing and having open
24 competition in your process.

25 So we hope that the agencies, and I'm

1 confident they will, will read those comments and
2 say, how can we make this a better process,
3 particular as we try to make sure we're more
4 inclusive of minority- and women-owned businesses
5 in our process.

6 DR. EAGAN: Just in defense of the
7 agencies, the agencies who really have no
8 interest in your problem don't commission a
9 study. They just do what they're doing, because
10 they don't want anybody to talk about it. So
11 clearly there's some interest at least in some
12 sectors of these agencies or they wouldn't be
13 looking at it, and they've looked at it now at
14 least three times.

15 MS. IBRAHIM: My first name is Haytham,
16 H-A-Y-T-H-A-M, last name is Ibrahim,
17 I-B-R-A-H-I-M. My question is about, did the
18 study compared to other studies, I assume, of
19 course, your company -- are there other states
20 where there is more diversity to start with in
21 the community? I have in mind California. And
22 would one of the reasons for simply the struggle
23 we have here is maybe there's not enough diverse
24 groups to bid to start with compared to other
25 states; is that one of the -- could be one of the

1 conclusions? Thank you.

2 DR. EAGAN: Well, certainly that is
3 part of it. There's certainly states with a lot
4 -- As I mentioned, Texas did about \$2 plus
5 billion in spending with M/WBEs, but it's a much
6 bigger state, much bigger M/WBE business
7 population.

8 However, we did see St. Paul get much
9 higher percentages than some of the state
10 agencies here. So clearly there is some
11 availability here in the Twin Cities area. And
12 we don't want to present it as if the state agent
13 -- you can see it's not uniformly low in every
14 category. I wouldn't say that either.

15 MR. KHOURY: My name is Aaron Khouri,
16 K-H-O-U-R-Y. I had two questions, the first one
17 is regarding, you kind of touched on it,
18 recommendations. My question is, it sounds like
19 you're recommending more SBE focused, centered,
20 policy rather than an M/WBE-centered policy. But
21 I'm curious, in your study was the statistical
22 significance of it very significant, enough for
23 you to allow for a stronger type of program,
24 something that would justify a set-aside or
25 preference type of program? That would be my

1 first question.

2 And the second is around the Mn/DOT
3 spending. I understand the federal funds weren't
4 included in that total, but what percentage of
5 Mn/DOT's spending is comprised of federal funds?

6 MS. MITCHELL: I have no idea because
7 we didn't even touch federal dollars nowhere or.

8 DR. EAGAN: With most states the
9 federal side is like 80 to 90 percent. That's
10 typical for most states.

11 We did see there's a basis for having
12 race and gender conscious features in the
13 remedies. The state has not done race conscious
14 set-asides in the past, and that is considered to
15 be a more extreme remedy, not very widespread
16 around the United States. It's fairly rare
17 around the United States.

18 We're not saying simply do an SBE
19 program. And there are some SBE programs that
20 already exist here. We're just saying it has to
21 be part of the remedy, that you do something race
22 neutral as part of the remedy.

23 MS. MITCHELL: I had someone -- Can I
24 come back to you?

25 UNKNOWN SPEAKER: No.

1 MS. MITCHELL: Well, excuse me. I
2 think I'm operating this.

3 Go ahead.

4 MR. JONES: Ezel, E-Z-E-L, Jones. I
5 would like you to comment relative to State
6 Statute 16C, that talks about one of the articles
7 saying that the state can procure up to
8 25 percent of its total state procurement based
9 upon small business or target businesses. Tell
10 me how this relates to that statute that existed
11 for many years relative to an SBE definition and
12 target business definition. So what does that
13 mean in terms of a statute that already exists
14 for the State of Minnesota?

15 DR. EAGAN: Well, the State of
16 Minnesota has a lot of statutes in place to do a
17 lot of things we've been talking about. It has
18 been implementing a number of them recently. It
19 has not really been implementing target
20 business. And today it has already in place
21 allowed for race conscious set-asides that are in
22 the state statute, actually, but haven't been
23 implemented. So a lot of these things have been
24 in the statutes for quite awhile, but just have
25 not been implemented. They've been implemented

1 sometimes in the past, but have been stopped.

2 MR. JONES: I guess what I'm saying is,
3 it appears that the statute allows for them
4 simply to do it. It's not a process and they
5 don't need a study to do it because the statute
6 has existed for many years. And since this is
7 all state procurement, it allows for them to do
8 that right now without this particular study.
9 And this reinforces the gap between what is
10 already in statute and what's there from a
11 performance standpoint. So what we need now is
12 really an implementation rather than simply
13 another study. I think this is a wonderful
14 study, but it doesn't get us into the game as a
15 targeted group of people.

16 DR. EAGAN: I think one thing that is
17 true, each if you have a statute, the race and
18 gender conscious elements of that statute cannot
19 be implemented if you don't have a factual basis
20 for it, a relatively recent factual basis. That
21 happens with a number of agencies. They'll have
22 some statute in place -- This happened in the
23 city of Augusta. They had a statute in place.
24 They hadn't done a study around the issue for
25 17 years. The Judge said you could no longer

1 continue to implement that because it was based
2 on data that was so old.

3 So you do need current information from
4 somewhere, even if you produce it internally.
5 You somehow have to identify there's some
6 problem, relatively recent problem that you're
7 trying to rectify.

8 MR. JONES: One point and I'm done.
9 The aspirational goal -- If the statute exists up
10 to 25 percent -- If there is a gap between the
11 actual performance based on the relative study
12 that's done, doesn't that form the basis for
13 conversation around aspirational goals of
14 25 percent, moving from where you at least to
15 close the gap between what you determined versus
16 what's intended by statute?

17 DR. EAGAN: Yes. The goal should be
18 based on some measure of availability. You could
19 set a small business goal any number you want
20 to. Some states have 50 percent. But your M/WBE
21 goal has to be somewhere around business
22 availability. It cannot be set on population or
23 something like that. But, yes, you can move on,
24 based on evidence that we're saying, to start
25 implementing what's already in the state

1 statute. Your general point I agree.

2 MR. LACHMANSINGH: My name is Carlo
3 Lachmansingh, L-A-C-H-M-A-N-S-I-N-G-H. I got
4 here a little late and probably missed some of
5 the preliminary findings of fact that you might
6 have had.

7 My first question to you is in your
8 evaluation, did you find concrete evidence of
9 discrimination? Okay. That's my first question.

10 And then what I'm going to say, which I
11 think I heard you say, is that the
12 recommendations or at the wishes of the
13 commissioners and their deputies and the various
14 contracting officers, they could implement it or
15 not?

16 MS. MITCHELL: Well, maybe not the
17 contracting officers, but the department heads
18 definitely have to make a determination.

19 MR. LACHMANSINGH: And I kind of go
20 back to some information that we just revealed in
21 the federal government here. The federal
22 government was able to go and get some
23 information on people who were not paying taxes.
24 Then they put out the information saying, hey, we
25 have an amnesty to have people come up, pay their

1 taxes and penalties or else we're going to go
2 after you. And I think most of us here know
3 that's a lot of billions of dollars coming in
4 from thousands of people out there.

5 My point is that if we don't have
6 leaders from the Governor down who are telling
7 his commissioners -- you know, that don't believe
8 that these programs are beneficial to small
9 businesses, they'll say it, but then they won't
10 implement it, it is hurting us. So if I'm making
11 some sense in terms of that analogy to what it is
12 you have on your recommendation here, you know,
13 what can we look forward to? But my first
14 question is, did you find discrimination?

15 DR. EAGAN: The legal standard is, is
16 there a strong basis in evidence that there's
17 discrimination in the marketplace. This doesn't
18 mean that every contracting firm is
19 discriminating or every procurement officer -- or
20 any procurement officer, necessarily. But is the
21 statistical data and the anecdotal testimony that
22 people we talked to and people who were surveyed,
23 did it provide a strong basis of evidence that
24 there was discrimination in this marketplace?
25 Yes, there is. Does that mean we proved it

1 beyond a reasonable doubt, as you would say in a
2 criminal court case? No. But is it sufficient
3 to justify taking remedial measures? Yes. And
4 we have taken the kind of evidence we developed
5 here in a court, with a judge who had no interest
6 in these programs. He hung out -- He was
7 actually in Jesse Helm's social milieu. That was
8 his interest in these programs.

9 But after hearing the evidence we had,
10 he concluded that MGT had demonstrated
11 discrimination in the relevant marketplace.

12 MR. LACHMANSINGH: So we have
13 discrimination here, but in the construction
14 community or business community we're not taking
15 that information and going after the owners or
16 the states to prove that we are being damaged, we
17 are being harmed. So I want -- Businesses in
18 here, you know, maybe we need to collectively get
19 our deals together and file a class-action
20 lawsuit to remedy some of these injustices going
21 on here. Because what you're telling me is that
22 there is discrimination. That's what I heard.
23 And that, in itself, is not good. It's not good
24 for Minnesota.

25 MS. MITCHELL: And like I said earlier,

1 the reports will be online as early as Monday.
2 There are several reports that the Department is
3 going to upload, so give it late Monday afternoon
4 before you check. The reports will be there. It
5 is going to be your responsibility, as business
6 owners, to make sure or hold accountable those
7 who have to make that decision to put policies in
8 place.

9 I live in North Carolina. I'm going
10 back home. You live here. You're greatly
11 impacted by the results of this study. And I say
12 that to say that we have done what we needed to
13 do for the state, and that is run an analysis and
14 find out if there are any disparities in
15 spending. We've done that and it's now yours.

16 Hold on one second because I saw one
17 more hand. Right here, and then I'll get to you
18 in the back.

19 DR. EAGAN: We probably need to hear
20 from people we haven't heard from.

21 MR. NAYMAN: My name is Greg Nayman,
22 N-A-Y-M-A-N. What about a press release; is
23 there going to be a press release of any kind? I
24 think the discrimination is obvious there with
25 all the .08 percent and 3 percents, ridiculous

1 numbers. Is there going to be any contact with
2 anybody besides just running it out onto the
3 net?

4 UNKNOWN SPEAKER: Wouldn't that be your
5 responsibility?

6 MR. LACHMANSINGH: That would be the
7 agency's responsibility, but that's kind of like,
8 why would they do that. I'm just curious.

9 MS. MITCHELL: Dorothy is barely
10 talking because she has a cold. She said they
11 can look at doing that.

12 MS. WISCH: My name is Kristin,
13 C-H-R-I-S-T-I-N-E, Wisch, W-I-S-C-H. I would
14 just like to know who's coordinating this
15 effort? We appreciate everything she's done
16 moving. Moving forward I just want to know where
17 to start contacting and facilitating. I don't
18 want to take adverse action; I just want to take
19 action.

20 MS. MITCHELL: And I believe every
21 project managers who are your DBE, M/WBE and TGB
22 directors for each of the agencies are on their
23 websites. The research I've done, all their
24 contact information is on the website, including
25 Dorothy's.

1 MR. WHITE: Kenneth White. I want to
2 follow up with Carlo's statement, when he talked
3 about the discrimination piece. If there's
4 evidence of discrimination, why aren't we talking
5 about moving straight to a race and gender
6 conscious program? Why are we promoting a
7 neutral program, when you just indicated there's
8 evidence of discrimination and evidence of
9 underutilization.

10 MS. PRZYMUS: I'd like to speak to that
11 a little bit because I have some history. Nancy
12 Przymus. In 1995 the Minnesota Supreme Court
13 ruled that the race and gender specific goals
14 that the City of Minneapolis had in place were
15 covered under antitrust. Large corporations took
16 the City of Minneapolis to court and won in
17 court, and I see a woman agreeing with me, that
18 we could no longer implement our race and gender
19 specific goals because they were anti-competitive
20 in nature under the antitrust laws of this
21 country.

22 And since that there's been a huge
23 chill on these kinds of specifics in the goals
24 for government public processes. And it was a
25 huge blow, in my opinion, it was a huge blow to

1 women and minority business growth in terms of
2 public contracting. And so we have to address
3 that by law, not by court.

4 MR. WHITE: With all due respect to
5 you, I addressed my question to the gentleman up
6 front.

7 MS. PRZYMUS: I apologize.

8 DR. EAGAN: I wasn't saying that it was
9 part of our recommendation that we weren't going
10 straight to a program with some race and gender
11 conscious features. We're just saying that we've
12 had a lot of case law since Croson. And Croson
13 sort of requires you still -- Even if you
14 identify discrimination, you still try to address
15 that, at least in part, with race and gender
16 neutral methods. So it's just a court
17 requirement. No matter what you find, you still
18 have to take the race and gender neutral method
19 seriously.

20 MR. WHITE: The race and gender neutral
21 program is not going to address discrimination.

22 DR. EAGAN: You know, the point is the
23 combination of the two. It's true it does not
24 necessarily directly address discrimination and
25 it casts a wider net.

1 But what happens with SBEs, if properly
2 done, they can be more aggressive. What happens
3 is people get so nervous about race and gender
4 conscious programs, even if they have them in
5 place, they don't want to really reject the low
6 bid for -- We heard that conversation before. We
7 don't want to reject the low bid for failure to
8 meet the goal because we're going to get sued.
9 You can't sue an SBE program. You can't sue it.

10 So, for example, in the city of
11 Charlotte, where they got 60 or 70 percent of the
12 SBEs who are M/WBEs, then if you didn't meet the
13 goal, which was, again, primarily women and
14 minority firms, you didn't get the contract,
15 period. You didn't have to worry about being
16 sued. So as a consequence, a lot of the
17 contractors said, give us the M/WBE program back
18 because it didn't really have teeth in it. I'd
19 rather have an M/WBE program without teeth than
20 an SBE program with teeth.

21 But it is true that a lot of SBE
22 programs are just for non-minority contractors or
23 they're just something in name only and they
24 don't do anything, that's true. So it depends on
25 how it's implemented.

1 MR. GALARNYK: One question and one
2 comment. Is this transcript going to be on the
3 web?

4 MS. MITCHELL: Yes, per Dorothy.

5 MR. GALARNYK: And the comment is
6 Minnesota is not alone in this problem. There's
7 other states that I've worked in and other states
8 that I've had experience in. Yes, there is
9 discrimination. I've seen it.

10 MS. MITCHELL: Any other questions?

11 Yes, ma'am.

12 MS. CHEEK: Jamara, J-A-M-A-R-A, Cheek,
13 C-H-E-E-K. You talked been one of the barriers
14 to competition was lack of knowledge about
15 policies and procedures. Can you expound on what
16 the businesses you interviewed said, why do they
17 have a lack of knowledge? What have they done to
18 try to overcome that lack of knowledge? And did
19 the businesses say anything about the complexity
20 of navigating government agencies, finding
21 opportunities, finding the appropriate people to
22 contract with? Thank you.

23 MS. MITCHELL: They did. The lack of
24 knowledge is just, you know, a lot of them say
25 they don't know where to go look for the policies

1 and procedures.

2 The other one is that you can have a
3 multi-agency policy, but each agency implements
4 it in their own interpretation of what it should
5 do. So that made it a little difficult, to make
6 sure they understood that as well. But a lot of
7 times it was that they just didn't know where to
8 find the policies. They couldn't find it on the
9 website or they didn't know what agency to ask.

10 The second part of your question, what
11 was it again?

12 MS. CHEEK: Did they speak to the
13 complexity of navigating government agencies and
14 what did they say.

15 MS. MITCHELL: Yes. The complexity --
16 Let me think. They did talk about -- Well, no,
17 not that it was complicated -- Once they found
18 out who to talk to, who the decision-maker was or
19 who was releasing bids, it was very easy to get
20 to them.

21 What their problem was is that they
22 couldn't get any feedback or response from some
23 departments. So if a contractor -- And I say
24 contractor in a broad sense of all business
25 categories. If a vendor ended up submitting a

1 price, a proposal for a professional service and
2 they had a question, they would call the person
3 in the proposal but would never get a return
4 call, so they'd just have to submit what they
5 think is their best answer, which in most cases,
6 from the people that I talked to, they lost the
7 proposal.

8 So then they would try to call and get
9 a follow-up as to, what was your selection
10 criteria, what did I miss, how can I improve, and
11 they could never get that response from an agency
12 on what it would take from the business owner to
13 be more competitive in the process.

14 So the navigation part was not
15 extremely difficult for the firms once you found
16 out who you needed to talk to. The difficulty
17 was get anyone to return their calls or even talk
18 to them at all.

19 MR. FARRELL: Hi. I'm Tim Farrell.
20 Question. If you look at the remedies that can
21 work here, and presumably you've seen some
22 progress made, it seems to me there's both
23 statutory that are done, legislation, and then
24 agency policies and procedures. Can you comment
25 on the appropriate mix? I mean, do you get the

1 Legislature to do something, to tell the
2 commissioners to do something, or how much of it
3 can they do internally in some of the experiences
4 that you've had perhaps in other states too?

5 DR. EAGAN: Well, it seems like, as was
6 pointed out earlier, you have a lot of
7 legislation in place already, so it is more the
8 issue of what aspects of that are you going to
9 implement. It takes so long to get legislation
10 changed at the state level, people do things
11 through executive orders and other kinds of
12 mechanisms, in changes in administrative policy
13 versus legislation because it can just be too
14 slow and awkward to really get legislative
15 changes.

16 MR. FARRELL: The commissioner part,
17 the agency parts?

18 DR. EAGAN: So I guess I'm saying that,
19 yeah, that plus executive orders. A number of
20 states, even very recently, have been pushing
21 executive orders on this issue to move it
22 forward, to give some impetus, even though there
23 are statutes in place. It's sort of the
24 executive order that they use to push it as
25 opposed to legislation.

1 MS. MITCHELL: And, Dorothy, correct me
2 if I'm wrong, but if one of the recommendations
3 we make is not in direct conflict with the state
4 statute already in place, can the commissioner of
5 that agency make a determination to put that in
6 place, one of those recommendations in place, if
7 it's not in direct conflict?

8 MS. LOVEJOY: In most cases probably.

9 MS. MITCHELL: In most cases. So it
10 really depends.

11 Let me get to you, because you've been
12 waiting, and then I saw a couple hands.

13 MR. WOODS: My name is Robert Woods.
14 Let's just say we have a magic pill that allows
15 us to get the action from out of the various
16 parties, of the Legislature, of the head of the
17 individual department of the agency. Let's just
18 say we have their attention and they want to do
19 something.

20 Now, I want a bill -- And I'm going
21 back to almost the original question, because, to
22 be honest with you, I don't think I got an
23 accurate answer or one that I was looking for.
24 I'm looking for quantifiable data for the best
25 practices, the remedies. I only want the

1 answers, the solutions, what's going to work.

2 What has worked and how much did it work.

3 In other words, you make a
4 recommendation, going back to something Ezel
5 alluded to, or someone else alluded to it also.
6 If you know that there's an answer that produces
7 the result, can we get any sort of measures?

8 In other words, before North Carolina
9 instituted this practice, we had X number of
10 dollars that the Department of Transportation or
11 the Airports Commission. But after instituting
12 this particular policy or this particular action,
13 now this amount of growth occurred. So what I'm
14 looking for is do we have any examples of
15 something that worked and how much did it work?
16 Because I think that then you can make more of a
17 compelling case, especially when you show how
18 much the discrimination or lack of opportunity
19 for these unincluded communities costs everybody,
20 taxes, healthcare. We can quantify that. We can
21 show you how bad things are going as a result of
22 that. What I'm looking for is what made things
23 work better?

24 DR. EAGAN: The city of Atlanta, before
25 they had that program, spending was like a tenth

1 of a percent. In their last study it was over
2 half a billion dollars, 30, 40 percent, and built
3 some of the largest firms in the United States.

4 Quite frankly, the most successful
5 programs have been federal set-asides, which have
6 built gigantic firms in the DC area connected
7 with that. They're just not as widespread as
8 state local governments. We've got very large
9 firms grow out of that.

10 And you've also seen, conversely, when
11 this programs have ended, there is data about the
12 drop, substantial drop in the utilization, for
13 the reasons that were enumerated. And that is
14 quantified, clearly quantified. It doesn't drop
15 to zero, but it tends to drop 15 to 3 percent
16 kind of thing.

17 MS. MITCHELL: But if you're asking if
18 we can produce those results?

19 MR. WOODS: Yeah, where can I go and
20 look and find out --

21 MS. MITCHELL: Well, we could probably
22 just tell you, like, the city of Atlanta, city of
23 Charlotte. Some of them you'd have to go to the
24 website, to those various municipalities'
25 websites and see what their results are. Many of

1 them do a good job of tracking and keeping their
2 reports online.

3 In the reports that we provided to the
4 agencies, there is a section in the Department of
5 Administration's report that has a best practice,
6 and we talk about actually what they do in that
7 best practice. So these recommendations that we
8 listed are just a few of the recommendations.
9 And then we give an example of who uses those
10 recommendations. So you can always just do
11 research through those entities and find out how
12 their -- what their results are.

13 DR. EAGAN: I want to make one other
14 comment. It sort of addresses what some people
15 have talked about. I don't think it's gotten
16 sufficient attention about this issue, which is
17 that so much of the stimulus money has been
18 focused on state construction and highway
19 construction and that sort of thing. And one of
20 the things, when you look at this data around the
21 country, it's kind of striking, you'll see it in
22 all of these reports, it will have the number of
23 firms getting work and the dollar value. And it
24 can be a pretty small number of firms getting a
25 whole lot of work. It's kind of striking in some

1 of these construction things as opposed to some
2 other areas.

3 So it is problematic. I think the
4 public, in general, is not very happy with
5 stimulus money going to a small group of firms,
6 be it bankers or construction firms. It is
7 supposed to be more broadly spread out, one way
8 or another, however you do that. And I think
9 construction has gotten more of a pass on that
10 because we're so busy beating up on investment
11 bankers.

12 MS. MITCHELL: Here and then I'll come
13 back to you.

14 MR. LACHMANSINGH: We have a problem
15 here. It's a political problem, where you have
16 commissioners who are serving at the wishes of
17 the Governor, okay. They can't go against the
18 Governor.

19 We had a situation here several years
20 ago with Michael Jordon, who was the commissioner
21 of Public Safety. He got fired because he
22 refused to do what the Governor told him. It's
23 right on record. And you have commissioners
24 throughout that report to the Governor. And we
25 know, small businesses, that the Governor, first

1 of all, he doesn't care. He's not going to be
2 around in a few months. It's incumbent on us to
3 go grab somebody who can do what it is that this
4 study says we should be doing. We've got to be
5 careful and make sure that these guys know what
6 this study is.

7 The other thing we can do is find a
8 friend in a legal company, Robins, Kaplan,
9 Miller, Ciresi. Them guys went and sued the
10 tobacco companies and brought a lot of money for
11 the state of Minnesota. Not that you're going to
12 guarantee a lot there, but at least you have
13 people who come to the table to kind of say, hey,
14 we want to make a difference. And that's all
15 we're asking, is to come and make a difference.
16 The commissioner is here. Even the cities, the
17 attorneys will tell the mayors and the people in
18 control, you know, Mr. Mayor, you can't do this
19 here because you're going to get sued. And
20 that's all I've got for the record.

21 MS. MITCHELL: Okay.

22 MR. JONES: A couple things. You just
23 spoke about the federal stimulus dollars, but
24 this study is not based upon any federal
25 programs. How do you connect the two, that

1 there's such a huge amount of spending with
2 federal dollars, but yet this study does not --
3 and many of the minority and targeted contractors
4 are left outside of the procurement dollars right
5 now being spent? That's one part of it.

6 Construction has the tendency to drive
7 all disparity studies. What percentage of
8 businesses are in non-construction or how much is
9 construction part of the subset? Because it
10 seems as if most the disparity studies are driven
11 by conversations around construction, but most
12 small businesses are not in the construction
13 business, per se. They're in professional
14 services. And how do we address that and get
15 them into the mix of things so we can have
16 conversations around the real businesses.
17 Because each group is populating various other
18 industries and not necessarily construction, per
19 say. Can you just talk a little bit about that?

20 This is not about discrimination. This
21 is about the basis of the study. How much of the
22 study is based on construction contracting versus
23 all the other non-construction, professional
24 services?

25 MS. MITCHELL: The study is based on

1 dollars spent in all different categories.

2 MR. JONES: What's the disparity of the
3 dollars relative to the industries that you
4 looked at?

5 DR. EAGAN: That varies. It varied a
6 lot between -- Some of the agencies in the study
7 had no construction.

8 MS. MITCHELL: Mosquito Control had no
9 construction the five-year period we looked at --
10 That's not what they do.

11 DR. EAGAN: Sports Facilities is very
12 lumpy. It's very dramatic.

13 MS. MITCHELL: So their spending was
14 not focused on construction. Their spending was
15 focused on professional services, goods, supplies
16 and equipment and other services. So each agency
17 is different just based on what their function
18 is.

19 MR. JONES: In your study does it say
20 what the basis in terms of industry groups that
21 your disparity group is based upon?

22 MS. MITCHELL: Yes. The study is based
23 on construction, architectural engineering,
24 goods, equipment, professional services and other
25 services.

1 MR. JONES: What I'm saying, if you
2 take the four to five agencies, can you say what
3 percentage of the relative studies that were done
4 on those were in each of those particular
5 categories?

6 MS. MITCHELL: Yes. In the full report
7 you have six charts, and they are all stratified
8 in different ways to show you construction
9 spending, A and E spending, professional services
10 spending. Okay.

11 Yes, sir.

12 MR. ALLIN: I'm Kent Allin, A-L-L-I-N.
13 I'm a little hesitant to admit who I work for.
14 I'm from the Department of Transportation --
15 Department of Administration.

16 I'm hearing enough concern about the
17 Department's interest in the study, so I think I
18 really feel I should say something about that. I
19 met with our commissioner earlier today. She is
20 extremely interested in seeing the full report.
21 We talked about some of the findings.

22 We currently have a race and gender
23 specific program, where there are purchasing
24 preferences for businesses owned by minor and
25 women. Based on what we're seeing in the report,

1 I'm sure that program will continue in some
2 form.

3 The Governor's office has expressed
4 particular interest in the study. The chief of
5 staff over there, Bob Schroeder, called in
6 Dorothy and our commissioner, what, three weeks
7 ago and basically said, let's get the study
8 wrapped up, let's get it out to the public, and
9 let's start taking some action on it.

10 So to the extent that there's perhaps a
11 belief that this is going to sit on the shelf and
12 nobody is interested, I think the evidence that I
13 have would suggest that's not the case. So I
14 would encourage you to stay tuned, and I think
15 you will see some results come out of this
16 hopefully fairly quickly.

17 MS. MITCHELL: Thank you. Okay. Well,
18 be on the lookout for the reports to be posted to
19 the website. Again, remember that there are six
20 reports. There are six sets of analyses done for
21 each agency based on their relevant spending.
22 There are six sets of recommendations for those
23 agencies based on the findings of those
24 analyses. That's it. If you have any other
25 questions --

1 UNKNOWN SPEAKER: Is there a summary in
2 the report? Because I don't know that I'm going
3 to be able to read a whole packet like that.

4 DR. EAGAN: There is a Findings and
5 Recommendations chapter which sort of boils it
6 all down.

7 MS. MITCHELL: And an executive
8 summary.

9 Yes, ma'am.

10 MS. CHEEK: I'm sorry. Jamara Cheek
11 again. What I didn't see in here is any
12 discussion about the effectiveness of the agency
13 small business offices. Did anyone talk about
14 that, ask about internal civil rights offices,
15 small business offices and are they actually
16 effectively helping companies contract with their
17 agencies; did you look at that at all?

18 DR. EAGAN: To some extent, yeah. It
19 is discussed, to some extent, in the findings.
20 Some of it is reflected in what people said in
21 their anecdotal testimony. We did interview
22 them. And then the data reflects it as well.

23 MS. MITCHELL: All right. Thank you
24 very much for coming and have a great night.

25 (Whereupon, the proceedings were

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concluded at 7:45 p.m.)

1 STATE OF MINNESOTA)
2
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4 COUNTY OF HENNEPIN)

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6
7
8 REPORTER'S CERTIFICATE
9

10
11 I, Julie A. Rixe, do hereby certify
12 that the above and foregoing transcript, consisting of
13 the preceding 78 pages, is a correct transcript of
14 my stenographic notes and is a full, true and complete
15 transcript of the proceedings to the best of my
16 ability.

17 Dated November 30, 2009.
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19
20

21 JULIE A. RIXE
22 Court Reporter
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