Report of the Governor's Advisory Commission on Minority Business Enterprise

November 2003

Executive Summary

The Census Bureau predicts that in the next fifty years the U.S. population will swell by 129 million people. Only 8 percent of that growth will comprise white Americans. By 2050 almost half of the U.S. population will be non white. Currently, Virginia reportedly has the ninth largest minority business population. With minority populations facing dramatic increases in the next half century, it is reasonable to expect that there will be a significant increase in the number of minority firms. According to the U.S. Small Business Administration, small companies will account for about 60 percent of new jobs between now and 2010. It is wise that Virginia leadership embrace the growth of minority businesses as an imperative to the financial growth of the Commonwealth's long term economy. Information within this report will suggest that, currently, Virginia is behind both its neighbors Maryland and North Carolina, in its policies and procedures in attracting and retaining small, women and minority-owned companies. Frankly, minority firms are making "business decisions" to locate within the states that are best for their business interests; and, too often, Virginia is reportedly not the chosen location.

Responsive to the Virginia Governor's Executive Order 35, the Governor's Advisory Commission on Minority Business Enterprise met and considered various issues relevant to minority business in the Commonwealth of Virginia. The following recommendations resulted from the Commission's work:

1. **The Commission recommends that all state MBE certification programs be consolidated, with the Virginia Department of Minority Business Enterprise (VDMBE) assuming certification responsibility for all state agencies.**

2. **The Commission recommends that all Virginia minority businesses be certified for 3 years (versus 2 years).**

3. **The Commission recommends that VDMBE offer training to new firms receiving certification that includes: an overview of state procurement programs and requirements; and instruction on how to do business with the state.**

4. **The Commission recommends that the VDMBE, in cooperation with the Small Business Financing Authority and the Department of Business Assistance, develop and publish (at least annually) a**

list of venture capital funds that have a record of investing in minority-owned businesses.

5. **The Commission recommends that the <u>Providing Access to Capital for Entrepreneurs</u> (P.A.C.E.) loan guarantee program continue to be a non-reverting fund that is fully capitalized at the originally intended amount of $1,000,000; and that the Governor include in the next biennial budget an amount necessary to bring the fund's capitalization to that level.**

6. **The Commission recommends that the budget of VDMBE be increased to a level more commensurate with the tax-paying constituency that the Department serves; and that the Governor include an increase of $500,000 per year in the next biennial budget.**

7. **The Commission recommends that a permanent advisory or policy board be established to guide and support the VDMBE in accomplishing its vision and mission.**

8. **The Commission recommends that the VDMBE be elevated in status; and strongly opposes: consolidation of VDMBE under other economic development agencies, reduction of the department to sub-agency status, and any further reduction of funding.**

9. **The Commission recommends that the disparity study be completed and submitted to the Governor and the General Assembly as scheduled, no later than January 1, 2004 and be published on the VDMBE website and elsewhere as appropriate.**

10. **The Commission recommends that VDMBE be charged with management/administration of the state's supplier diversity programs, and with leadership in implementing supplier diversity best practices throughout the Commonwealth.**

11. **The Commission recommends that the state require any minority-owned business, so identified on Electronic Virginia (eVA), be pre-certified by VDMBE or by a certifying authority recognized by VDMBE.**

12. **The Commission recommends that the reporting system on minority vendor utilization: (1) be standardized, (2) have clearly established lines of responsibility, and (3) vest VDMBE with the proper authority to facilitate compliance.**

13. **The Commission recommends that eVA and the Commonwealth Accounting Reporting System (CARS) have a coordinated list of MBEs, verified by the VDMBE, as a characteristic in their databases. This list must be reviewed quarterly, and updated as a characteristic common to both databases.**

14. **The Commission recommends that reporting be generated automatically from both the CARS and the eVA databases so as not to impose an undue burden on the agencies. Specifically each agency should not be compiling reports if there is a central payment database from which this information can be drawn.**

15. **The Commission recommends that the Governor ask the VDMBE Director for regular input on agency compliance with Executive Order 29; and, that compliance (with statutory and Executive Order 29 reporting performance and requirement mandates) be used as factors in evaluating agency head performance.**

16. **The Commission recommends that the eVA system functionality be designed to require buyers to document that they have complied with applicable statutes and policies requiring agencies to implement plans to maximize participation in state procurement programs by small, women and minority-owned businesses.**

17. **The Commission recommends that the Department of General Service (DGS) regularly conduct surveys of vendor and buyer satisfaction with eVA to determine whether there are unrecognized barriers to full participation or other issues that adversely effect minority business participation in the system.**

18. **The Commission recommends that the Commonwealth examine carefully and implement actions to eliminate any significantly adverse impact (on small, women or minority-owned businesses) resulting from procurement practices, including: "bundling", spend management, pre-qualifications, Virginia Partners in Procurement, etc.**

19. **The Commission recommends that the Commonwealth review SBA polices and procedures facilitating joint ventures and teaming, to determine whether and how they might be used in State procurements. At a minimum, the State could provide basic information and pointers to those businesses that are interested in joint venturing.**

20. The Commission recommends that the Governor require that each procuring agency include, in their minority business plan, a forecast of the goods and services that they intend to purchase in the next fiscal year. These reports should be compiled and published by VDMBE.

21. The Commission recommends that an ombudsman program be set in place to represent small businesses, especially in matters related to Code of Virginia Section 2.2 4806.

22. The Commission recommends that the Commonwealth establish a formal mentor-protégé program to build an effective, long-term working relationship between established businesses/vendors (mentors) and early stage businesses/vendors (protégés) that are certified by the VDMBE.

The Commission recognizes that implementation of some of these recommendations will require legislative action. Accordingly, the Commission recommends that the entire Advisory Commission's report be implemented by legislative action; or (at a minimum), that the following be considered by VDMBE and the Governor for inclusion in the legislative agenda advocated by the agency and the executive branch:

- Increased funding for the VDMBE that is more commensurate with the level of minority business tax base that the state enjoys and would like to promote.

- Legislation necessary to improve functionality of eVA as a compliance, data collection and reporting tool.

- Legislation establishing improved reporting standards, resources and authority.

- Legislation establishing a permanent policy or advisory board for VDMBE that will oversee/advise and support development of long-term strategies related to minority business in the Commonwealth of Virginia.

- Legislation authorizing the VDMBE to extend the duration of minority business certification.

- Legislation and budget support for implementation of an ombudsman program.

- Legislation to require development and publication of agency procurement forecasts.

- Legislation to authorize the Governor to require action to address/remedy minority procurement disparities identified in the study of utilization and availability now underway.

These legislative initiatives would allow the VDMBE and the Commonwealth to more effectively serve its customer base, both external and internal.

Lastly, the Commission notes that it received various complaints concerning VDOT's reported poor treatment and poor utilization of minority businesses (particularly as prime contractors) along with other VDOT operational problems. Some of the complaints were from the Commission members themselves. The Commission had neither the opportunity nor resources to adequately investigate any one agency in its treatment of minority businesses. However, the Governor may want to consider whether such further investigation is warranted.

The body of this Commission report contains a more detailed discussion of the Commission's recommendations, preceded by the Introduction, Summary of Methodology, and Background Information.

Report of the Governor's Advisory Commission on Minority Business Enterprise

November 2003

Introduction

Governor Mark R. Warner established the Governor's Advisory Commission on Minority Business Enterprise (the Commission) in Executive Order 35 for the purpose of:

- Examining the effectiveness of the state's minority business enterprise programs, including its certification program, and recommending changes to make them more efficient, effective and valuable to minority business enterprises;

- Developing strategies for improving the state's utilization of and support of minority business enterprises;

- Identifying strategies for increasing the resources of the executive branch for utilizing and promoting minority business enterprises;

- Recommending needed legislation, regulatory changes, or agency or program streamlining or consolidation to enhance the efficiency and effectiveness of the state's minority business enterprise efforts and improve the state's utilization of minority business enterprises;

- Examining the policies, programs and practices of state agencies regarding the inclusion of minority business enterprises in state procurement activities, and to make recommendations for needed changes.

This report provides an analysis and evaluation of the problems currently faced by minority-owned businesses doing business with the Commonwealth of Virginia and recommends ways that the Commonwealth can increase its minority business participation and enhance the effectiveness of programs designed to assist minority business enterprises.

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II. Methodology

The Commission held public hearings in Richmond, Hampton, Lynchburg, and Manassas; and met with officials at the Virginia Department of Transportation (VDOT), the Virginia Department of General Services (DGS), Virginia Information Technology Agency (VITA), and the Maryland and North Carolina offices of minority business enterprises.[1]

In addition, Commission members examined information provided by the Department of Minority Business Enterprise (VDMBE) regarding certification and utilization of minority contractors by state agencies, documents detailing best practices for supplier diversity programs, findings and recommendations from previous studies, and materials related to the implementation of eVA. Commission members also reviewed prior state studies and reports regarding minority business participation published by state agencies and legislative committees.

Finally, the Commission reviewed current Virginia and federal statutes and regulations applicable to nondiscrimination in procurement, minority business certification and supplier diversity programs.

[1] See summary of testimony at Appendix A

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III. Background Information

A. Current Virginia Law

There are a number of state statutes and regulations that prohibit discrimination in public procurement and impact effective utilization of minority-owned suppliers. The major one is the Virginia Pubic Procurement Act.

Virginia Public Procurement Act, Section 2.2-4300 et seq, is the general statute that governs public procurement. It prohibits arbitrary and capricious distinctions among suppliers in public contracting and establishes lowest price as the most important factor in purchasing goods, and as a major factor in the procurement of most services.

Two different provisions of state law encourage minority business participation in procurement:

- Section 2.2-4310 (a) – Nondiscrimination clause – this provision prohibits discrimination based on race, religion, color, sex, national origin, age, disability, or any other basis prohibited by State law relating to discrimination in public procurement.

- Section 2.2-4310 (b) – Programs to facilitate participation – this provision requires all state agencies to have written programs to facilitate participation of minority, women and small businesses in state procurement programs, and specifically requires state buyers to consult lists of certified minority-owned businesses as part of the procurement process.

Compliance with these requirements is an essential objective of Executive Order 29 that mandates full implementation of current state laws facilitating minority participation, and quarterly reporting of results by agency or university.

Unfortunately, state and municipal procurement officials consistently rely on a strict interpretation of Section 2.2-4310(a) to prevent any meaningful efforts to proactively facilitate minority participation, to establish minority goals, or to have preferences of any type, as might be inferred by Section 2.2-4310(b). As a result, minority procurement is extraordinarily low across the state, currently averaging less than 2% annually.

The Virginia Fair Employment Contracting Act, Section 2.2-4200 through 2.2-4201, prohibits any state contractor from discriminating against employees or applicants for employment. Section 2.2-4201 states that nothing in the Fair Employment Contracting Act shall empower any agency to require any contractor to grant preferential treatment or discriminate because of "an imbalance" related to the total number or percentage of persons represented in any community or in the Commonwealth. (see also the Virginia Public Procurement Act at Section 2.2-4311)

In addition to these requirements the purchasing manual published by the Department of General Services (DGS Manual) establishes additional requirements for state purchases of goods and services.

Section 3.10 of the DGS Manual, pursuant to Section 2.2-1111 of the Virginia Code, requires agencies to establish internal procedures to facilitate the participation of small businesses and businesses owned by women and minorities. Additional requirements include:

- A listing of minority and female vendors must be maintained by each agency for solicitation purposes.

- Sealed bids or proposals must include businesses selected from a list maintained by the Department of Minority Business Enterprise.

- Section 3.10(d) provides that procurements expected to result in contracts over $100,000 must comply with guidelines set by the Secretary of Administration.

- The guidelines provide that the offeror on such contracts must submit three sets of data regarding minority and women owned firms: 1) ownership; 2) utilization of such firms in the last 12 months; and 3) planned involvement in the current procurement.

Unlike its neighbors, (Maryland and North Carolina) and other states (e.g., Texas)[2], Virginia does not have any law that establishes goals, preferences, set-asides, etc. to promote minority participation in state procurement.

B. External Legal Environment

Two Supreme Court cases established the standards that any minority preference, set-aside or quota program must meet to be constitutional*: City of Richmond v. Croson Co.*; and *Adarand Constructors v. Pena*:

• *Croson* requires state and local governments wishing to adopt set-asides or

[2] See summary at Appendix B

even firm goals to identify with precision the discrimination such programs are designed to remedy.

- Under *Croson*, significant statistical disparities between the level of minority participation in a particular field and the percentage of qualified minority businesses in the pool would support an inference of discrimination and support programs to correct these disparities.

- In *Adarand*, the Supreme Court held that "all racial classifications, imposed by whatever federal, state, or local entity, must be analyzed under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests."

- The Supreme Court decisions establish that, before Virginia can implement any firm minority-owned business goals or establish any preference programs to promote business with such firms, it must first demonstrate that minority-owned businesses have suffered discrimination by the government or private businesses in the marketplace.

- The accepted way to establish discrimination is through a "disparity study" that measures the availability of minority and women-owned businesses against the actual utilization of these businesses in procurement. A significant statistical disparity (supported by anecdotal information) can give rise to an inference of discrimination that may be used as the basis for implementing programs to correct the discrimination.

Even where past discrimination can be established, however, the remedial program undertaken to correct the discrimination must be narrowly tailored to accomplish the remedial objective, and be time limited. In addition, alternative ways of eliminating the discrimination must be considered and shown to be ineffective.

The recent decisions of the United States Supreme Court approving and rejecting admissions programs at the University of Michigan suggest that there may be ways to implement race conscious programs designed to facilitate supplier diversity in public procurement that do not require the state to meet the same burden of proof necessary to support minority preferences, set-asides or quotas. It may be possible to argue that programs may legally be established to enhance minority participation that specifically consider race as one factor in an individualized decision-making process, especially where such programs do not award extra points to minority businesses or use separate decision-making procedures to award contracts to minority businesses.

In addition, it is important to note that no federal or state law prohibits or constrains the development of outreach programs designed to encourage more

minority or women-owned vendors to participate in state procurement programs or to develop the capacity of such vendors to participate.

Finally, nothing in federal law prohibits (and the state's own nondiscrimination rules clearly support) the development of a state compliance program that seeks out and eradicates discrimination in contracting where it exists. Such a program would actively compare the availability of minority-owned firms, capable of providing goods and services to the state, against actual utilization of minority-owned firms by state agencies. Where there is a statistically significant disparity in utilization, the compliance program could mandate a review of purchasing procedures and criteria to determine whether they had an adverse impact on minority participation, and require use of procedures and criteria that did not have such an impact, unless the applicable standards were justified by business necessity.

C. History of Prior Studies and Reports

The Commission reviewed studies of minority business participation by legislative agencies and committees.

JLARC Study – 1995

JLARC reviewed minority contracting in 1995 and found:

- Minority participation in agency procurement ranged from less than 1% to 42%.
- Only 52% of state agencies had established written programs for minority business solicitation as required by state law.
- For FY 95, minority businesses had contracts totaling $108 million for goods and services.
- For FY 95 this meant that minority contractors reportedly received 3.9% of the total expenditure base of $2.78 billion.
- State agency compliance with applicable state law was inconsistent.
- Many agencies did not have minority business lists.
- DGS did not review compliance with the requirements of the Code or its Manual.

SJR 12 Subcommittee – 1996

The legislature passed a resolution creating a joint subcommittee to study state procurement practices related to minority businesses in 1996. The subcommittee was charged with conducting a disparity study. The subcommittee adjourned

without completing its work and did not submit a report. Among the ideas considered by the subcommittee were:

- Linking bonding requirements to the size of the business;
- Mandating that state agencies have a minority business program in place;
- Increasing the purview of the VDMBE to increase oversight of state agencies; and
- Promoting increased leadership at state agencies.

SJR 474 – 1999

SJR 474, passed by the legislature in 1999, set up a joint legislative subcommittee to oversee a two-year disparity study. The first phase of the study was to be preparatory, leading up to a funding recommendation for a disparity study. During the second phase of the study, the subcommittee was to oversee the conduct of the disparity study.

The subcommittee met five times with the objective of completing the first phase of the study.

The subcommittee could not reach a consensus regarding the issue of going forward with a request to fund the study, although a majority of the members present at the last meeting voted to recommend funding.

Senator Benjamin Lambert proposed a budget amendment in the 2000 General Assembly Session that would have provided $950,000 for a disparity study.

The budget amendment was not adopted.

An interim report of the subcommittee was published in 2000, SD 55, which documents the subcommittee's work.

Commonwealth Competition Council, 2000-01

The Commonwealth Competition Council conducted a study of minority business that documented that many of the concerns identified by JLARC in 1995 had not been addressed or resolved.

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IV. Commission Recommendations

Recommendation #1

> ***The commission recommends that all state MBE certification programs be consolidated with VDMBE assuming responsibility for all state agencies. In addition to merging the VDOT and VDMBE programs under VDMBE, the state should consider consolidating the Department of Business Assistance's Women's Business Enterprise Program with the VDMBE Program.***

Rationale for #1
Streamling and Improving Certification
Applications for certification, at VDMBE, are processed by one person; an Administrative/Office Specialist III. Applications for certification, at VDOT, are processed by a staff of 4; a Supervisor/Human Resource Analyst II and 3 Human Resource Analysts I, plus possible administrative support.

Individuals who testified at this Commission's public hearings expressed frustration with having to submit certification applications to state, federal, and local governments with each requesting basically the same information.

Those testifying also expressed some reluctance to complete multiple certifications because of expected low return on investment. They saw the process as requiring a lot of time and effort to gather data and complete the application with a low probability of getting state contracts.

Recently, changes at VDMBE were implemented to streamline the certification process. These changes include simplifying and shortening the process for firms already certified under SBA, VDOT and VMSDC programs; reciprocity with Maryland and other jurisdictions with certification programs; putting the certification application on-line; and decreasing and simplifying paperwork.

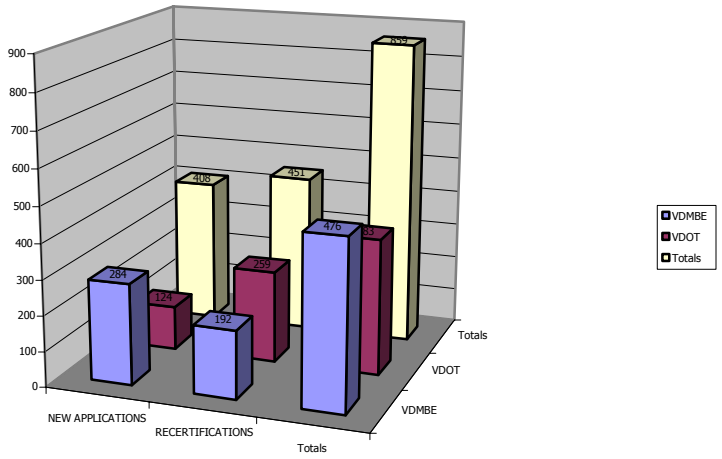
From January 1, 2002 to December 31, 2002, VDMBE received 476 applications for certification: 284 (59.6 percent) were from new firms applying for certification; 192 (40 percent) were from firms applying for re-certification. VDMBE currently has 1,220 firms certified. This total includes firms certified

under federal standards applicable to the Virginia Department of Transportation (VDOT).

For the year ending June 30, 2002, VDOT processed 383 applications for certification: 259 (67.6 percent) of those applications were from firms seeking re-certification. VDOT received 124 applications from new firms seeking certification: 100 of the 124 were from firms recruited by VDMBE through its technical support contract with VDOT. During this period 80 new firms were certified. Currently, VDOT has approximately 394 firms certified.

CERTICATION WORKLOAD

	VDMBE	VDOT	TOTAL
New applications	284	124	408
Recertifications	192	259	451
TOTAL	476[3]	383[4]	859



Certification is a means to an end and not the end itself. Certification should be a first step in the process, which helps facilitate the firm receiving business from the state. One agency should be responsible for state certification, providing "one-stop shopping" for entrance into Virginia's procurement system.

Aggressive implementation of the state's supplier diversity program should result in an increase in the number of firms seeking to do business with the state and applying for certification. Processing this increase should be accomplished by

[3] For period ending January 1, 2002 to December 31, 2002
[4] For year ending June 30, 2002

increasing the productivity of existing resources committed to the functions, rather than adding resources to separate organizations performing basically the same function. Consolidating staffing would also provide resources to plan, coordinate, and conduct orientation and training for certified firms.

The merger of VDOT and VDMBE certification programs would provide "one stop shopping" for entrance into Virginia's Procurement System. In addition, the merger would:

- Provide easier access to programs and services
- Require less paperwork from clients
- Provide for smoother flow of information between programs
- Reduce confusion regarding which designation is necessary
- Provide substantial savings for the Commonwealth

A determination needs to be made as to (1) which regulations/statues/codes will govern the certification process. (2) How federal and state requirements can be harmonized consistent with the requirements of the federal supremacy clause, (3) Appropriate classification and number of certification staff; and (4) Office space.

Recommendation # 2

The Commission recommends that minority business certification last for a period of three years.

Rationale for #2

Under current federal regulations applicable to federally funded transportation projects, VDOT offers minority business certifications for three years, with an annual update. VDMBE, operating under applicable state law, provides a two-year minority business certification.

Increasing all Virginia minority business certifications to three years, would help the certification process to be more uniform, without any perceived material impact on the reliability of certification data. The recertification burden on minority businesses and VDMBE would be reduced, while offering the potential for efficiencies in the VDMBE and VDOT programs.

Recommendation #3

The Commission recommends that VDMBE provide training to new firms receiving certification that includes an overview of state procurement programs,

requirements and instruction on how to do business with the state.

Rationale for #3

In several states where programs were reviewed, after a firm completes the certification process, it receives training on state procurement practices, preparation of bids and proposals, and information about state and federal resources to assist the development of that firm. Such training enhances the capacity of the certified firm to compete successfully for state business.

Virginia should update/develop the publication "How to Do Business with the State" to be included in the welcome kit which is distributed to all newly certified firms. Reportedly this publication was published in the past and proved to be a valuable resource. The publication should list information on each state agency, with contact information on agencies' supplier diversity coordinators or champions (see recommendation 10 below).

Recommendation #4

The Commission recommends that the VDMBE, in cooperation with the Small Business Financing Authority and the Department of Business Assistance, develop and publish at least annually a list of venture capital funds that have a record of investing in minority-owned businesses.

Rationale for #4

The United States Chamber of Commerce has identified access to capital as the number one traditional barrier to ensuring growth and success among women and minority businesses.

In the early 1990s, only several million dollars in venture capital had been invested in MBEs. According to Bates and Bradford, the minority Venture Capital sector now has well over $1 billion in capital under management, with $2 billion within reach. The authors found that minority-oriented venture capital funds grew enormously during the 1990s. The 24 funds that responded to the detailed questionnaire had raised $1.3 billion through year-end 2000. In 1998 alone, five of the surveyed minority-oriented VC funds had raised over $700 million in capital from institutional sources. For more detail see the full report at: http://www.emkf.org/pages/371.cfm

"Access to capital is one of the biggest hurdles for any entrepreneur - and even more so for minority entrepreneurs," said Carl J. Schramm, president and chief executive officer of the Kauffman Foundation of Kansas City, the nation's largest supporter of entrepreneurship and the sponsor of the study. "We hope this report helps to lower those capital barriers."

The Kauffman Foundation report documents that the number of minority oriented venture capital funds is growing fast and that there are at least 24 such funds now in existence. Bob Johnson, founder of cable television's BET and owner of the Charlotte NBA franchise, said in June 2003 that he plans to offer minority-owned companies greater access to capital by creating a national lending institution devoted to their needs. It is important that Virginia's minority-owed businesses have access to information on the availability of such funds so that, where appropriate, they can seek capital from such organizations. In addition, VDMBE should bring information about the success of minority-owned venture funds and the role of public pension funds in this market to the attention of the appropriate individuals at the Virginia Retirement System. Given the evidence that minority firms are good investments, the VRS should be asked to explore whether it should join other public pension funds in making these kinds of capital investments.

Recommendation #5

> ***The Commission recommends that the Providing Access to Capital for Entrepreneurs (P.A.C.E.) program continue to be a non-reverting fund that is fully capitalized at the original amount of $1,000,000 and that the Governor include in the next biennial budget an amount necessary to bring the fund's capitalization to that level.***

Rationale for #5

The Virginia Capital Access Fund for Disadvantaged Businesses (also known as Providing Access to Capital for Entrepreneurs or P.A.C.E) was established three years ago to serve as a source of minority business financing through indirect lending, utilizing tailored financial products to help secure small business loans from participating banks. The P.A.C.E. program is a loan guarantee program, <u>not</u> a direct loan program.

To date, the program's chief limitation in fully actualizing its potential to serve MBEs, in matters of contract financing and small business expansion, is the marginal amount of funding that the program has to guarantee commercial lending.

P.A.C.E. was initially capitalized with $300,000 (of non-reverting funds). The proposed 2000-02 budget included an additional $700,000 to boost the funds capitalization to a total of $1 million. The additional funding never materialized; and the initial capital has been legislatively reduced by $100,000 as a result of budget limitations. Accordingly, P.A.C.E. has operated on less than its initial allocation, and has been hampered in its ability to offer itself as a consistent alternative for MBEs seeking financing.

Low levels in procurement MBEs may have an indirect, if not direct link to their inability to access capital for the purposes of bidding on state contracts. Given the growth rate of minority-owned businesses and their positive impact on the state's economy; the potential pool of P.A.C.E. recipients and the demand for such support, will continue to grow. If the state is serious about building the capacity of minority-owned businesses to compete for the state's business, adequate funding for the P.A.C.E. program is essential to achieving its objectives.

While it is recognized that there is a separate and somewhat larger small business loan fund available through the Virginia Department of Business Assistance, many commission members strongly believe that, sometime in the past, minority business needs have gotten "lost in the shuffle" and have become frustrated by the process. This belief is supported in part by public and private comments from various Virginia minority firms. Therefore, having an adequate fund, managed by a minority business advocate (VDMBE) is viewed by the Commission as still highly desirable or even necessary.

Recommendation # 6

> ***The Commission recommends that the budget of VDMBE be increased to a level more commensurate with the tax-paying constituency the Department serves and that the Governor include an increase of $500,000 per year in the next VDMBE biennial budget.***

Rationale for # 6

According to the US Bureau of Census, Virginia has the ninth largest minority business population in the country. It is estimated that this population represents 14.9% of all businesses in the Commonwealth, while minority persons make up 26.9% of the total population in Virginia. Sales for this group eclipse $8 billion dollars. Minority businesses employ 118,000 of the Commonwealth's citizens and pay taxes on $2.6 billion dollars of payroll.[5] When compared as a function of general population or business population, funding for the Virginia Department of Minority Business Enterprise is woefully inadequate.

Currently, VDMBE funding (after adjustments) is comprised of approximately $322,000 in unrestricted General Fund dollars and less than $900,000 in highway trust funds supporting the implementation of the Virginia Department of Transportation federally required minority support and certification program. $322,000 represents approximately .0026% of the general fund directed towards the advocacy of a taxpaying constituency that represents close to 4.0% of the tax revenue base for the state.

[5] U.S. Census Bureau: Statistics for Minority-owned business by state 1997

In addition to lack of funding, VDMBE has experienced a lack of policy support in developing and maintaining a long-term strategy on behalf of the minority business community. The department does not have an advisory or policy board to assist it in carrying out its mission. Such a board would enhance the viability of the agency and its programs by increasing its visibility in and responsiveness to the client community it is designed to serve.

VDMBE has a range of statutory responsibilities that it is unable to fulfill optimally because of serious and significant resource limitations. For example, among other statutory duties, VDMBE is the agency primarily responsible for the legislative agenda as it pertains to minority business.

As stated in the authorizing legislation, "The Director shall submit directly or through the assistance of the Governor his recommendations for legislation or other action as he deems desirable to promote the purposes of this chapter."

Most paramount is the ability of the VDMBE to develop and implement effectively, legislative strategies that are consistent with its mission. The department has not been able to develop a short term or long-term strategy or a proactive legislative agenda to advance the business interests of minority-owned businesses in large part because of inadequate staff resources. Nor has it been successful to date in reacting quickly and effectively to legislative proposals that are adverse to the interests of minority-owned businesses.

To act as the chief legislative advocate for minority-owned businesses for the state the agency must have adequate staff to monitor and participate in the legislative process and in-depth knowledge of the legislative and budget processes and all the nuances thereof. The Department must also have a well-defined strategy for advancing the interests of minority-owned businesses through legislative and budget action. This strategy must include improvements to the state procurement and certification processes but it should not be limited to those issues.

Both the long term legislative vision of the VDMBE and its understanding of the particulars of the legislative process requires support. In the absence of such support, the Department will continue to be unable to successfully fulfill its mandate as the legislative advocate for minority-owned businesses.

In addition to support for the legislative advocacy function, VDMBE needs additional human resources to permit it to contribute to the growth and success of minority-owned businesses as authorized by its enabling legislation. Included in the duties of VDMBE are the following statutory obligations:

a) Coordinate as consistent with law the plans, programs and operations of the

state government that affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.

b) Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of state departments and agencies.

c) Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting the establishment and successful operation of minority business enterprise.

d) Within constraints of law and availability of funds, and according to the Director's discretion, provide technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the special problems of minority business enterprises.

The Director of VDMBE and this Commission recognize that budget constraints affect all state agencies in their ability to provide optimum levels of service.

Nonetheless, the commission finds that the funding available to the VDMBE has and continues to fall well below the amounts necessary to provide minimal levels of service to the minority business owners it is designed to serve.

If the VDMBE is to continue to manage the state's certification program, oversee the P.A.C.E. program and accomplish at any level any of the statutory objectives set forth above, its funding must increase. And, if the VDMBE is going to become a partner with state procurement agencies in enhancing the success of the state's supplier diversity program, the Director estimates that the VDMBE will need six procurement advocates to be effective. The additional funding of $500,000 per year will help alleviate the current shortfall in funding versus expectations and allow the Director to move quickly to enhance VDMBE's ability to assist the Commonwealth in meeting its supplier diversity goals.

Recommendation # 7

> ***The Commission recommends that a permanent advisory or policy board be established to guide and support the VDMBE in accomplishing its vision and mission.***

Rationale for #7

Establishment of a permanent board will facilitate long-term stability and effectiveness for the VDMBE by providing support for the vision and mission of the VDMBE and policy direction to the staff of the agency.

Recommendation #8

> ***The Commission recommends that the VDMBE be elevated in status and strongly opposes consolidation of VDMBE with other economic development agencies reduction of the department to sub-agency status and any further reduction of funding.***

Rationale for #8

After current budget cuts and directed transfers, the VDMBE is funded at approximately $300,000 annually from the General Fund; and at approximately $900,000 from the Non-General Fund for support to VDOT. The VDMBE agency director voluntarily receives no compensation for salary or expenses. VDMBE is operating at a reduced staff of 10 paid employees, down from an authorized level of 20. Only one of the 10 employees is dedicated to agency administrative support. Seven employees provide technical and program support to VDOT's civil rights efforts. One employee performs minority certifications. One supports 140 other state agencies in their minority business efforts. One supports the Minority Loan Program and the Disparity Study. There is nothing to be gained by combining VDMBE with any other agency. No personnel or support dollars can be saved.

There is much to lose by down grading VDMBE from state agency status. Over the past two administrations, minority procurement has decreased significantly, while reported results were erroneously inflated. During the past fiscal year, businesses that were certified as minority received less than one percent of Virginia state procurement dollars; as compared to over 8 percent in North Carolina and over 7 percent in Maryland. Recently, the Governor has been able to utilize the weight of his office and the strength of the VDMBE agency director to convince various other state agency heads to seriously address this problem.

Reduction of the VDMBE to less than state agency status, or further reduction in its funding, at a time when state minority procurement results have been so low and misreported, would send the wrong signal to other state agencies and to the state's growing minority population. Currently the VDMBE is functioning efficiently, while accomplishing a great deal more with 30% fewer staff than last year. All prior internal, and many external, issues have been professionally resolved.

VDMBE is now aggressively attacking its mission. Any reorganization that reduces its influence or statute or further budget cuts will take the heart out of that effort. Clearly, the Commonwealth would loose the current "no cost" agency.

If the Department of Minority Business Enterprise were consolidated with another agency, there is a possibility the minority business focus will be lost.

Recommendation #9

> ***The Commission recommends that the disparity study be completed and submitted to the Governor and the General Assembly as scheduled, no later than January 1, 2004 and be published on the VDMBE website and elsewhere as appropriate.***

The Commission recommends that the Governor and the General Assembly review findings and recommendations of the disparity study when submitted, and implement immediately every legally defensible strategy to ensure that minority businesses are fully utilized by state agencies in reasonable proportion to their availability, including the establishment of agency-specific goals and objectives that will bring utilization of minority vendors by individual agencies in line with minority vendor availability on an industry by industry basis.

Rationale for # 9

Data provided by VDMBE show that minority-owned businesses in the Commonwealth of Virginia currently are receiving less than 2% of state contracts. This is clearly unsatisfactory. But, to determine the full scope of the problem and to implement an effective supplier diversity program, the state must have better data on the availability of minority vendors and their utilization by state agencies.

Currently available data on utilization of minority vendors is disjointed and uncoordinated. In addition, there is little if any data on availability of minority vendors to provide goods and services sought by the state. Such data is essential to the development and improvement of the state's supplier diversity initiatives.

In addition, court cases (outlined in the background section of this report) make clear that credible, reliable data on the availability and utilization of minority-owned businesses is essential to the identification of possible discrimination in contracting and to the implementation of any race conscious remedies.

The commission recognized early in its discussion the need for better data to guide further development of procurement policies that enhance and ensure the ability of minority-owned businesses to compete for and win their fair share of state contracts for goods, services and construction. Accordingly, it encouraged the director to pursue authorization and funding for a statistically valid study of the disparity between the availability of minority-owned businesses and their utilization by the state in its public procurement activities. That study is now underway.

As indicated in the discussion set forth in Appendix B, Maryland and North Carolina, as well as a number of other states including Texas, have in place

programs to enhance utilization of minority-owned vendors and contractors that include written numerical goals and objectives. Maryland has a 25 percent goal for minority participation in state contracting; and North Carolina has a 10 percent minority participation goal for state contracts. To the extent that Virginia's supplier diversity program does not incorporate specific goals, Virginia will be at a competitive disadvantage in attracting minority businesses to the Commonwealth and those located in Virginia will not grow at the rate similar firms grow in neighboring states thereby reducing their potential contribution to revitalizing Virginia's economy.

Recommendation #10

> ***The Commission recommends that VDMBE be charged with management/administration of the state's supplier diversity programs and leadership in implementing supplier diversity best practices throughout the Commonwealth.***

VDMBE responsibilities should include the mandate to:

- Establish policies
- Establish procedures
- Train agency heads and agency champions

Rationale for #10

Virginia's supplier diversity programs require radical redesign and coordination. There are agencies in the state that have implemented best practices in supplier diversity while others have no understanding or commitment to the advantages to the state regarding such practices. VDMBE should be empowered to take the lead in bringing Virginia's current supplier diversity programs in line with accepted best practices.

Once the baseline data on availability and utilization is gathered and reported, the Commonwealth will be in a better position to take the steps necessary to assure that it has an effective supplier diversity program.

An effective supplier diversity program generally has nine elements:

- Goals -- a clear communicated written objective from the top executive levels of the organization;
- Benchmarking -- reporting procedures that help the organization evaluate the effectiveness of the program and its objectives;

- Accountability--performance evaluations for all purchasing related personnel linked to the achievement of objectives;

- Pre-sourcing--preparing the marketplace by matching up procurement opportunities to MBE contractors;

- Advisory group--develop a cross functional advisory committee to provide valuable feedback;

- Subcontracting program--a subcontracting plan for each solicitation;

- Education-- buyers and first tier suppliers are trained on how to manage supplier diversity programs;

- Certification--certification required for firms seeking to participate in supplier diversity programs and firms included in reports for accountability and benchmarking purposes;

- Outreach--proactive efforts to recruit minority businesses with the capability to meet requirements of upcoming solicitations.

Aggressive and effective implementation of the state's supplier diversity program is critical to increasing the utilization of minority businesses. To bring the state's programs in line with best practices, the program should be structured to include:

- Designation of agency champions;

- Specified duties and responsibilities for champions;

- Training and orientation for champions;

- Contact list for champions;

- Policies, procedures and guidelines for reporting procurement results;

- Goals and objectives against which to measure results;

- Ongoing review, evaluation and accountability for results.

Individuals selected as agency champions should be at a level in the agency to have a broad overview of agency functions and requirements, and participate in developing strategies for agency procurement. The agency champion should

report to a senior level official, the CEO or COO, within the agency Director, university President, etc.

In addition, the following steps should be considered in deciding how best to enhance the effectiveness of Virginia's supplier diversity efforts:

- The Governor's Deputy Chief of Staff should be the Governor's point of contact for unresolved Supplier Diversity Program issues;

- VDMBE should be authorized to hire a Deputy Director, with a background in business and procurement, to focus on minority contracting;

- The state should encourage the development of smaller contracts; reduce contract bundling with a focus on prime contract opportunities for minority businesses;

- The state should develop, publish, and disseminate to minority businesses, a comprehensive list of upcoming contracts, as is done in Maryland;

- The state should develop a more reliable system to account for and measure minority contract expenditures;

- The state should seek greater diversity among its purchasing agents, purchasing directors, and contract administrators, as well as all other state employees involved in the procurement of goods and services.

Other initiatives to be considered as ways to strengthen Virginia's commitment to supplier diversity include:

- Develop sanctions/incentives for agencies not complying/complying with the establishment of a supplier diversity plan/program and the goals and objectives listed therein;

- Develop sanctions/incentives for agencies regarding non compliance/compliance with applicable Code of Virginia provisions related to minority business participation such as removal of an agency's procurement authority where non-compliance is found;

- Require the inclusion of a minimum of four minority and/or women owned businesses with solicitations over $15,000 to $30,000;

- Require the inclusion of minority and/or women owned businesses in all solicitations over $15,000;

- Require a minimum of two minority and/or women owned businesses in

solicitations over $5,000 and up to $15,000;

- Continue the Governor's Advisory Commission on Minority Business Enterprise or establish a permanent VDMBE policy or advisory board that will hold semi-annual state hosted public hearings as a barometer of how MBEs are participating in opportunities;

- Include a supplier diversity course in the training curriculum for purchasing certification of state buyers as well as annual re-certification; and

- Establish a mentoring program that will match MBEs with business leaders for developmental assistance.

In addition, there should be more of a effective means to assure compliance with existing state requirements that:

- Require that request for sealed bids or proposals include businesses selected from a list made available by VDMBE as required by state law;

- Require state agencies to develop supplier diversity programs using the model guidelines provided by Governor's Office as the framework; providing for a comprehensive plan/program and to include the attributes of a good supplier diversity program;

- Require timely reporting by state agencies to VDMBE re: their minority purchasing dollars; and

- Establish an interdepartmental board to foster and promote the development of minority business participation; share information and other suggestions regarding program development, goal attainment and utilization activities.

Other strategies that should be considered to enhance the effectiveness of supplier diversity programs include:

- Effective monitoring of compliance with code requirements as well as the DGS procurement manual;

- Reinstatement of previous policies requiring that all offerors submit three sets of data for small businesses and businesses owned by women and minorities: ownership; utilization of such firms; and planned involvement of such firms on current procurement;

- Identification of subcontracting opportunities with every major contract and share information with VDMBE to disseminate to MBEs;

- Provision to prime contractors of names and contact information for VDMBE and other minority business organizations;

- Linkage of bonding requirements to the size of the business;

- Inclusion of effective minority business outreach in personnel evaluation criteria of all appropriate state procurement officers;

- Better oversight on minority business activity with state agencies; the Department of General Services should incorporate agency minority business procurement activity into its procurement review process;

- Clarification of minority procurement policies in the DGS/DPS manual;

- Emphasis on compliance with the state's solicitation requirements (relevant to minority business) in DGS training. Training materials that clarify state policy for agency procurement personnel should support these efforts;

- Modify fiscal reporting to reliably measure second tier MBE procurement dollars;

- Empower VDMBE to cite non-compliance issues within a defined reporting structure;

- Develop a "business case" boiler plate for minority business participation as it pertains to the Commonwealth of Virginia with additional, more specific language based on the agency; re: state revenue/savings; and

- Develop regulations for prime contractors regarding their compliance with policies and practices regarding minority business participation.

The Commonwealth must have leadership at the executive level that expresses the vision and mission of the supplier diversity program in order to achieve success. Executive Order 29 provides this executive level vision, but much must be done to move from vision to reality. The lack of stated procurement goals or objectives in the Executive Order or other state requirement is inconsistent with best practices for achieving supplier diversity. Moreover, the complexity of the range of options for improving the state's supplier diversity programs deserving consideration requires strong, central coordination in order to ensure that programs are implemented that are most likely to ensure achievement of supplier diversity objectives.

Recommendation #11

> ***The Commission recommends that (in order to be recognized as an MBE) the state require all minority-owned businesses participating in eVA be certified by VDMBE or by a certifying authority recognized by VDMBE in order to be categorized as a minority firm on eVA, a firm must be certified by VDMBE or a certifying authority recognized by VDMBE.***

Rationale for # 11

On March 1, 2001, the Commonwealth of Virginia launched a new government to business web site. eVA is designed to facilitate, integrate and streamline the entire procurement process from requisitioner to supplier and back. eVA is said to be the first of its kind to integrate all aspects of electronic procurement – from posting online catalogs of vendors, to handling bids, facilitating payments, and providing contract data. Underlying the eVA portal is the capability of sharing data directly with the Enterprise Resource Planning (ERP) type systems that are the backbone of many organizations. Whether an agency has a comprehensive ERP system or is a paper-based operation, there are key components of eVA that can be leveraged to achieve even more effective purchasing practices.

The web site includes free procurement information for public access, as well as password-protected sites for registered agencies and vendors. Users "shop" the e-mail for services and goods that are on contract or part of the catalog of an approved supplier. eVA contains the ability to compare "online" vendor prices for similar items as well as track the up-to-the-minute standing of a requisition/purchase request's approval/status. In addition, data from approved purchases made through eVA may then be used to identify procurement patterns, trends and savings opportunities.

The vision of this administration is for the state's procurement personnel to use eVA as their primary procurement tool. Self-certification on the state's automated procurement system, and the uncoordinated manner in which certifications are verified or not, cause reporting chaos with respect to data on contracts awarded to or purchases made from minority, women and small business suppliers. Furthermore, lack of coordination with the budget and accounting database, along with a cultural ideology that "reporting MBE numbers is not an important aspect of any agency's normal business", indicates that the reporting system needs to be revamped and the current culture altered.

Executive Order 29 has made great strides in beginning the change in culture. However clear lines of responsibility, verification of minority certification, and a well thought out process to confirm self certifying businesses are necessary to ensure timely and accurate reporting, evaluation and accountability for achievement of policy objectives. Clear lines of responsibility and authority need

to be established between the proprietors of the available databases and those at VDMBE responsible for compiling the statewide report.

On the agency side, eVA allows buyers to tap into a single source of product and procurement information to streamline purchasing workflow. Because eVA automates everything from solicitations to invoicing, purchasers can track the entire procurement process. This capability needs to be harnessed to support the objectives related to minority business procurement. Direct reporting to the Governor, the head of VDMBE and agency heads on small, women and minority business contracts from eVA is a capability that must be enabled.

eVA can reduce time-consuming jobs such as phone calling and faxing to obtain products. Purchasers are able to buy a product and pay for it all at once. Buyers can access eVA's search engine, type in the name of a commodity, and the screen will instantly display all online catalogs for that commodity.

For purchases less than $5,000 agencies only need one quote. Currently, there is no functionality built into eVA that requires buyers to review lists of minority, women or small business suppliers before making these sole source purchases. Nor is there a current plan in place to review data on purchases made by individual buyers to ascertain the level of commitment to supplier diversity objectives or whether there may be patterns that indicate discrimination in agency or buyer decision-making at this level of purchasing.

For purchases of $5,000 to $50,000, where more than one quote is required, eVA allows fast access to various vendors for price comparisons. Vendor screens require two clicks, however, to see available data on small, women or minority-owned business status. This can be a disincentive to full compliance with the policies underlying Executive Order 29.

These are among several challenges to the effective implementation of the administration's stated goals under Executive Order 29 embodied in the design and implementation of eVA. In addition, use of this system is voluntary and may or may not be used and consequently the procurement dollars may or may not be recorded. Moreover, it is unclear how the DGS contract compliance office plans to incorporate achievement of supplier diversity objectives into its routine evaluation of data available from the system or how such data will be used to evaluate buyer or agency performance in this area.

Recommendation #12

> ***The Commission recommends that the reporting system on minority vendor utilization be: (1) standardized, (2) with clearly established lines of responsibility, and (3) with proper authority vested in VDMBE to facilitate compliance.***

Rationale for # 12

Critical to the effective management of the Supplier Diversity Program is an effective system to capture and report information on contract activity. The current system which uses the Commonwealth Accounting and Reporting System (CARS) as the primary data base for reporting minority contract expenditures does not report all state dollars, prime contracts and sub-contracts expended with minority firms. The system, which captures information on payments made by the state, reflects expenditures made to vendors after receipt of an approved invoice, hence would not capture sub-sub-contract expenditures.

VDOT does report prime contractor and sub-contract expenditures on quarterly reports submitted to VDMBE. Moreover, the VDOT report, which is primarily structured to comply with federal highway requirements, does not interface with CARS.

Recent analysis by VDMBE found significant errors in the data from the CARS database and has required more in-dept analysis to better ascertain the validity of the reporting.

What may be most problematic, however, at the current time, is the conflict between this administration's stated goal of making real improvements in the utilization of minority-owned businesses embodied in Executive Order 29 and the implementation of the eVA system that the administration is promoting.

Recommendation #13

> ***The Commission recommends that eVA and CARS have a coordinated list of MBEs, verified by the VDMBE, as a characteristic, in their databases. This list must be reviewed quarterly, and updated as a characteristic common to both databases. Payment and procurement information reporting should be compared to indicate initial availability among possible vendors, involvement of minority businesses in each procurement process as well as contract award rates. Dollars procured on the eVA system and the CARS system should be compared for discrepancies.***

Rational for #13

The process of reporting and the use of certification are key components to the accurate measure of the Commonwealth's progress in its supplier development efforts. The current system for reporting state procurement dollars paid to minority-owned businesses contains several inconsistencies related to the

understanding of roles, responsibilities and authority from agency to agency. These inconsistencies need to be rectified. If the VDMBE is to fulfill its statutory mandate to compile the figures into a single statewide report, the reporting agencies must have the resources to get the information to VDMBE in a standard format and on a timely basis without it being an additional burden to the daily process.

Currently, reporting is done once an agency identifies an MBE supplier with whom it has done business. The agency provides the FEIN number to VDMBE who submits it to CARS. CARS matches that FEIN number against the existing payment database. The report is returned to VDMBE for review and final "scrubbing." The report has been inaccurate in the past due to human error and the inclusion of non-minority businesses.

Under the proposed scenario all payment information is kept on the CARS database.

Recommendation #14

> ***The Commission recommends that reporting be automated utilizing the CARS and the eVA databases so as to not provide an undue burden on the agencies. Specifically each agency should not be compiling reports if there is a central payment database from which this information can be drawn.***

Rational for #14

Recommendations #13 and 14 are related components of the reporting system. And will be discussed as such. The process of reporting and the use of certification are key components to the accurate measure of the Commonwealth's minority supplier development progress. The system for reporting the Commonwealths' minority procurement dollars contains several inconsistencies and vague distinctions as to roles and responsibilities of the agencies VDMBE and the Department of Accounts. To effectively implement a solid systematic approach to minority business procurement that is accurate, and to unburden some to the agencies, the system requires two tasks and three policy changes to be completed.

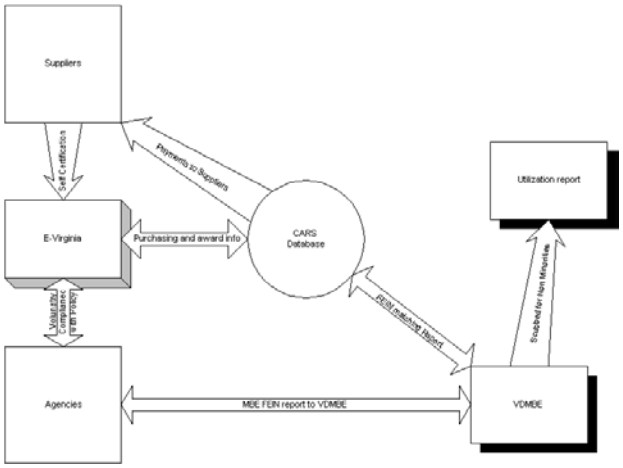
Tasks

- Compliance on eVA with the state's opportunity policy should be programmed into the procurement process.
- Certification information should be stored within the DOA/CARS database.

Policy

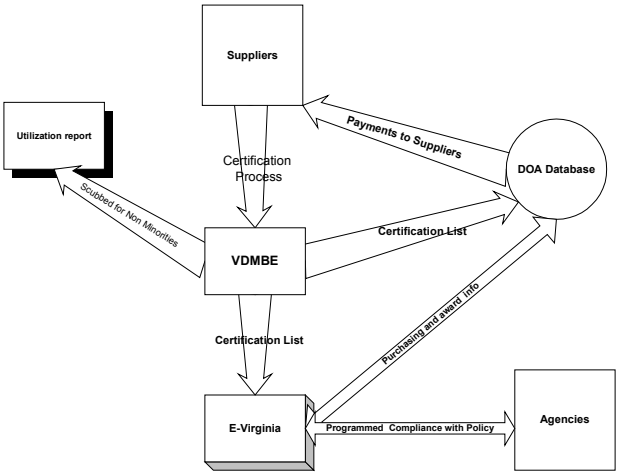
- Eliminate self-certification – this process is error prone.
- Integrate VDMBE and eVA's MBE list
- Report on VDMBE certified or reciprocal MBE certified businesses only

Before



Currently, reporting is made once an agency identifies an MBE supplier, with whom it has done business. The agency provides the FEIN number to VDMBE who submits it DOA. DOA matches that FEIN number against the existing payment database FEIN and a report is returned to VDMBE for review. VDMBE then performs a final "scrubbing" to insure that companies who are not MBE's are not included in the report. This system is fragmented and does not make efficient use of the Commonwealth's data resources. Specifically, the reporting system, the payment database and certification processes are not interactive in the exchange of information.

After



In the recommended system, eVA will get its certification list from VDMBE. Compliance driven eVA will insure ***opportunity*** is being presented to MBE's. eVA will continue to submit all contract information to DOA. DOA will receive information from both eVA and VDMBE and will produce the procurement report quarterly.

Implementation of these recommendations will reduce the time burden to the individual agencies in identifying, procuring, and reporting minority procurement results. By changing the system the Commission believes the Commonwealth can make better use of both its human and data resources. Currently there is no reliable procedure to include minority vendors in the state eVA procurement

process. The process needs to be reversed. The Agency information and compliance on provision of opportunity to MBE's, is a passive effort (voluntary), while reporting is an active and aggressive effort on the part of agencies. The process that exists is dependent on "volunteer" efforts to comply with MBE opportunity policy. By programming compliance into the process, the VDBME can begin to use it's efforts to find specific companies to support non-participatory commodities and services for future opportunities

In reference to the self-certification provision, self-certification does not allow for any assurance, to the agency, as to the validity of minority business status. This is problematic in that an agency can make best efforts to comply with policy only to find out, at the end of the quarter, that the MBE with whom the agency procured, does not qualify as an MBE.

The Commission recommends that each time a list is generated from eVA for the procurement of products and services, a certified MBE should be on that list. If a certified MBE is not on the list, then that should be reported to the VDMBE for proactive pursuit of a qualified MBE.

Recommendation #15

> ***The Commission recommends that the Governor ask the VDMBE director for regular input on agencies compliance with Executive Order 29; and, that compliance with statutory reporting requirements and Executive Order mandates be used as factors in evaluating agency head performance.***

Rationale for #14, & 15

An historical picture of the Commonwealth's minority business expenditures is difficult to construct.

Self-certification on the state's automated procurement system, and the uncoordinated manner in which certifications are verified or not, cause reporting chaos with respect to data on contracts awarded to or purchases made from minority, women and small business suppliers. Furthermore, lack of coordination with the budget and accounting database, along with a cultural ideology that "reporting MBE numbers is not an important aspect of any agency's normal business", indicates that the reporting system needs to be revamped and the current culture altered.

Unless all minority-owned vendors providing services or goods to the Commonwealth are required to be certified by VDMBE or a VDMBE approved certifying authority, there is a risk that the data on utilization will be unreliable or inaccurate. The importance of participating in eVA should be stressed to all firms applying for initial certification and re-certification. The registration for eVA and

the application for certification should be completed concurrently, so that when businesses complete their certification they are also registered on eVA. Premium participation in eVA is recommended for all certified firms. Basic registration should be required.

Recommendation #16

> ***The Commission recommends that eVA system functionality design be modified to <u>require</u> buyers to indicate that they have complied with applicable statutes and policies requiring agencies to implement plans to maximize participation in state procurement programs by small, women and minority-owned businesses.***

Rationale for #16

Virginia's statewide e-procurement application is one of the most comprehensive in the country. In little more than a year, more than $150 million in state purchases have been processed entirely electronically through the network -- far more than any other state. As of July 2003, there are 11,400 registered vendors and 171 state agencies and 282 local entities participating in eVA. Of the approximately 10,000 buyers in the state system, 6,000 have used eVA. Over $837 million has been spent using the system and there are now more than 749 vendor catalogues in the eVA storefront.

eVA is a very powerful procurement engine with tremendous potential. However, the success of eVA is not as widespread and accepted as it may appear. First and foremost, small, women and minority-owned businesses have limited awareness and understanding of how to use eVA to enhance their business potential. Extensive training has been offered to the participating agencies, but a lack of vendor training is evident from vendor comments despite favorable commitments from DGS staff.

Because Virginia spends more than $5 billion a year on goods and services, and local governments spend an additional $5 billion, vendors who join eVA can enhance their chances of reaching this lucrative, government market. Through eVA, vendors receive a round-the-clock venue to tap into the state's purchasing power, as well as 24-hour access to solicitations and award notices. A vendor need only sign up at eVA's central, online registration to access statewide, government business. Because Virginia has no in-state preference objectives for purchasing commodities, any vendor throughout the US has a chance to obtain business from the Commonwealth, setting up additional competition for small, minority and women owned businesses in the Commonwealth.

All vendors must pay a registration fee to participate in eVA. The basic registration fee is $25. Businesses choosing additional services, pay a fee of

$200 for premium registration. Premium account owners can sign up for notification of procurement opportunities greater than $5000. In addition, beginning July 1, 2003, a 1% fee (capped at $500) will be billed on all contracts awarded through the eVA system.

eVA is intended as a break-even operation, and these fees are set at a level estimated to be necessary to meet the costs of the outside vendor that operates the program. While vendors are allowed to add the fees into their prices for bid purposes, it is likely that larger businesses will enhance their pricing advantage by adding the fees to overhead rather than to bill them back on individual contracts. Small businesses are unlikely to be able to do so, particularly on smaller contracts.

eVA claims to be a level playing field for every company, small or large, women or minority-owned, but that will need to be proven. Prior to implementation of eVA, DGS reportedly had 2,400 minority-owned firms on its list of vendors. Currently, approximately 600 minority-owned firms have registered for eVA among approximately 4500 small, minority and women owned businesses. eVA expects to save the Commonwealth millions of dollars, but we do not know if that will be the case.

Recommendation #17

> ***The Commission recommends that DGS regularly conduct surveys of vendor and buyer satisfaction with eVA to determine whether there are unrecognized barriers to full participation or other issues that adversely effect minority business participation in the system.***

Rationale for #17

On the eVA forum, there are numerous comments that relate specifically to a lack of training in the use of eVA. The following is a vendor comment, "I re-registered today on eVA. When I exited the website and went back to it and tried to logon, it says invalid password/user ID. When I use the same user ID and password on Ariba I have no problem getting in. Why am I having such a difficult
problem?" A web-based training tool is recommended to help guide vendors through this process.

Here is one vendor's comment concerning the cost to participate with eVA, "…pay to sign up and pay 1% of every piece of business you do with the state. Personally I think this is a rip off. In my industry (computers) we are lucky to get 5% (i.e.: mark-up) profit on a sale. Then they want us to give 20% of that to these eVA people. Many of the bids say you must be registered with eVA just to bid. Am I the only one who thinks this is ridiculous"?

Recommendation #18

> ***The Commission recommends that the Commonwealth examine carefully and implement actions to eliminate any adverse impact (on small, women or minority-owned businesses) of procurement practices, including: "bundling" spend management, Virginia Partners in Procurement, etc.***

Recommendation #19

> ***The Commission recommends that the Commonwealth review SBA polices and procedures facilitating joint ventures and teaming, to determine whether and how they might be used in state procurements. At a minimum, the state could provide basic information and pointers to those businesses that seek additional information on joint venturing.***

Rationale for #18, & 19

Contract bundling and consolidation present numerous hurdles for small businesses. Typically a single small business does not have the necessary resources to bid on larger contracts and is relegated to small subcontracting opportunities. The Small Business Administration (SBA) has adopted policies to facilitate joint venturing among small businesses and encourages teaming arrangements. The Commonwealth should adopt a similar approach to enhanced use of teaming and joint ventures.

Utilization of large or "bundled" contracts has been shown to have an adverse impact on the ability of small, minority or women-owned businesses to compete for state business. The administration must be careful to ensure that implementation of the Virginia Partners in Procurement Program or "spend management" initiatives do not result in a reduction in the number of small business vendors or concentration of state contracts in larger companies to the detriment of small, women or minority-owned businesses.

To the extent larger or "bundled" contracts are used in state contracting, the Commonwealth effectively delegates the implementation of the state's supplier diversity program to prime contractors. The prime contractors are essentially responsible for contact award (the sub-sub-contracts), contract administration, acceptance of work and payment. In such circumstances, it is critical that the prime contractors be held accountable for proposing and effectively implementing acceptable supplier diversity programs.

Recommendation #20

> ***The Commission recommends that the Governor require that each procuring agency include in their***

minority business plan a forecast of the goods and services which they intend to purchase in the next fiscal year. These reports should be compiled and published by VDMBE.

Rationale for #20

As a matter of function and the Code of Virginia "Each agency must develop a budget forecast". A best practice of organizations is to include in this budget forecast the specific services that are expected to be procured in the coming fiscal period. Availability of such information will allow all Virginia businesses to better plan to participate in competing for public contracts.

Recommendation #21

The Commission recommends that an Ombudsman program be set in place to represent small business, especially in matters related to Code of Virginia Section 2.2 4806.

Rationale for #21

The Commonwealth can be viewed as a large business. The manner in which it procures its goods and services, and the manner in which it deals with its vendors are critical to maintaining positive relationships with the citizens of the Commonwealth. Issues pertaining to the resolution of contract disputes can be very sensitive, both legally and politically. Because, the Commonwealth is both a public entity and one of the larger procurers of goods and services in the state, any impropriety, or conflict in the interpretation of contracts should be avoided. The issues can be made more complex by the desire of the small business to continue a positive relationship with the Commonwealth's representative. Moreover, minority businesses rarely have the resources necessary to commit to protracted contested disputes related to contract awards and payments. The Commonwealth needs an alternative dispute resolution advocate that will assist smaller businesses in addressing their contract issues. The Department of Business Assistance has an ombudsman program, but it is reportedly inactive. During the MBE Advisory Commission's public hearings, the public expressed frustrations in not being able to resolve minor issues with the Commonwealth, and the need for an ombudsman.

Recommendation #22

The Commission recommends that the Commonwealth establish a formal Mentor Protégé Program to build an effective, long-term working relationship between established businesses/vendors (mentors) and early stage businesses/vendors (protégés) that are certified by the VDMBE.

Rationale for #22
One of the real issues confronting many MBEs is the lack of corporate infrastructure to effectively win and execute contracts. The federal government, many state and municipal governments, and private companies have recognized the problem and implemented programs to match established and small businesses. The relationship between the mentor and protégé should:

- Enhance and strengthen the capacity of the MBE to contract with state agencies or to receive subcontracting opportunities from a state contract.

- Foster long-term relationships between the general or prime contractor and MBEs.

- Increase overall participation of MBEs in the Commonwealth of Virginia procurement process.

The following policy, mission and goals are necessary to implement an effective Mentor Protégé program:

It is the intent of the Virginia Mentor Protégé Program to build an effective, long-term working relationship between established businesses (mentor) and early stage businesses (protégé) who are certified by the Commonwealth of Virginia as minority business enterprises in order for the latter to benefit from the knowledge and experience of the established business.

The Commonwealth should seek to encourage mentor partnering with 100 of the largest majority companies during business with the state.

V. Conclusion

The Commonwealth has the opportunity to bring its supplier diversity and minority business programs in line with best practices for the 21st Century and prevailing norms in states with which Virginia competes for business. To fail to do so, would be counterproductive at a time when small, women and minority-owned businesses are serving as the engine for economic recovery.

The Commission recognizes that there are very real constraints imposed by the current budget crisis that may limit the investment of new revenues in state programs. It is confident, however, that the Commonwealth will receive a high return on its investment, if implementation of the recommendations in this report is given the highest priority over the next biennium.