

Southern University and A&M College

Digital Commons @ Southern University and A&M College

Electronic Dissertation and Theses

Summer 7-1993

Affirmative action and minority construction firms : an analysis of the public works set-aside programs in Louisiana

Curtis L. Boyd

Follow this and additional works at: https://digitalcommons.subr.edu/dissertations_theses



Part of the [Public Affairs, Public Policy and Public Administration Commons](#)

AFFIRMATIVE ACTION AND MINORITY CONSTRUCTION FIRMS:

AN ANALYSIS OF THE PUBLIC WORKS SET-ASIDE

PROGRAMS IN LOUISIANA

LC
2851
SG52
B69
1993
C.3

A Research Project

Presented to

the Faculty of the Department of Public Administration

Southern University

In Partial Fulfillment

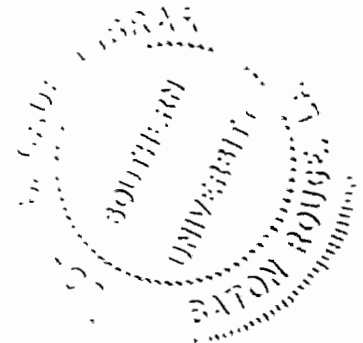
of the Requirements for the Degree

Master of Public Administration

By

Curtis L. Boyd

July 1993



Southern University
Baton Rouge, Louisiana

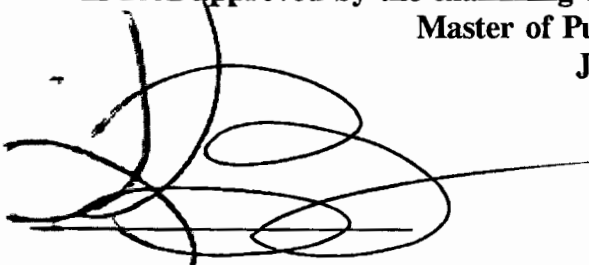
CERTIFICATE OF APPROVAL

RESEARCH PROJECT

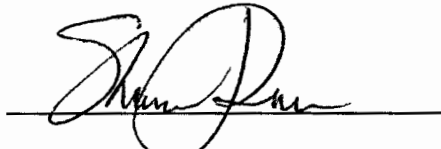
This is to certify that the Research Project of

Curtis L. Boyd

has been approved by the examining committee for the research requirement for the
Master of Public Administration,
July, 1993.



L. Perry, Advisor



Sharon Parsons


Department Chairperson

ABSTRACT

City of Richmond v. Croson received national attention when the Supreme Court mandated that all states and municipalities conduct a disparity study to investigate the possibility of discrimination against minority firms in the construction industry, as a precondition for maintaining or instituting a set-aside program. This paper is an offspring of that disparity study conducted in Louisiana. It will primarily focus on disparity in the Department of Transportation and Development (DOTD) in awarding public works construction contracts and the possibility of administrative problems in the set-aside program. Past studies proved that disparity exists in public works construction contracting in Louisiana; however, it is important to examine the effectiveness of the set-aside program and determine if there are administrative problems within the program itself that are contributing to this disparity. Qualitative data analysis was employed to determine disparity and problems in the administration of the set-aside program. The two components of qualitative data analysis employed in this paper are the historical approach and content analysis. The study concludes that there is a significant degree of disparity in DOTD public works construction contracting on the state level, more so than the federal level, and this is probably due to Louisiana's "good old boy network."

TABLE OF CONTENTS

I ntrouction	2
P urpose of Paper	4
M ethodology	5
L iterature Review	6
A Historical Analysis of Set-Aside Programs in Public Works in the United States	8
A Historical Analysis of Set-Aside Programs in Public Works in Louisiana	12
D ata Analysis	14
A n Analysis of the Administrative Structure for Implementing the Set-Aside Programs in Public Works in Louisiana	18
C onclusion	21
B ibliography	24

2

**Affirmative Action and Minority Construction Firms:
An Analysis of the Public Works Set Aside
Program in Louisiana**

Whether preferential treatment comes packed as a quota, a goal-and-timetable, a set aside, or affirmative action, the consequence is the same. Favoring certain individuals because of race, gender, religion, or national origin inescapably means that individuals not similarly endowed are disfavored for the most offensive reasons. To pretend such action is affirmative or that such discrimination is benign mocks the valiant struggle for equal opportunity society that has defined America's domestic agenda for the last four decades. The nation lost sight of this fundamental truth during the decades of the 1970s It took a series of Supreme Court rulings in the late 1980s to right that wrong¹

Prior to the enactment of the 1964 Civil Rights Act, white males were the preferred group in employment for managerial, supervisory, and executive positions in both government and the private sector. Because minorities are economically disadvantaged, President John F. Kennedy established executive orders prohibiting discrimination in employment by corporations which conduct business with the federal government. In doing so, President Kennedy introduced affirmative action to the nation. He did so in Executive Order No. 10925² which defined affirmative action in terms of active recruitment and outreach measures aimed at enhancing employment opportunities for all Americans. The executive order linked the phrase "affirmative

¹William B. Reynolds, "Tending the Civil Rights Garden," Wake Forest Law Review, 25 (1990): 197-221.

²CFR 1959-63, 448-54.

action" to civil rights enforcement policy. Kennedy's order directed federal contractors to take affirmative action to ensure that applicants are employed, and that employees are treated fairly without regards to their race, creed, color or national origin.³

President Lyndon Johnson created Executive Order 11246 which gave aggrieved parties and corporations the power to obtain conciliation and provide remedies through consent decrees. The executive order went beyond prohibiting employment discrimination against minorities and women: It also required employers with federal contracts in excess of \$10,000 to develop and implement an affirmative action plan that would seek to remedy the effects of past discrimination. The Office of Federal Contract Compliance Programs of the Department of Labor (OFCCP) was charged with the responsibility of reviewing such plans.⁴

The establishment of affirmative action policies in government agencies created public opposition. Much of the problems affirmative action encountered were due to the opposition by white males; this opposition created a backlash against government sponsored programs which began in the early 1970s, a decade after the 1964 Civil Rights Act. This backlash continued through the administrations of President Ronald Reagan and George Bush. Opponents of affirmative action argue that there is no need for such policy because: (1) it is virtually impossible to find a serious racist in a position of power; (2) it would seem difficult to sustain the idea that America is still oppressive and discriminatory; (3) discrimination has already been

³Hugh D. Graham, "The Origins of Affirmative Action: Civil Rights and the Regulatory State," *Annals*, 523 (September 1992), 50.

⁴Kenneth B. Clark, "Affirmative Action: Problems, Remedies, and Prognosis in the 1980s," *Consultations on the Affirmative Action Statement of the U.S. Commission on Civil Rights*, Volume I (February 10, 1981), 40.

abolished in this country.⁵ Affirmative action advocates disagree on all three of these points. Moreover, they believe that affirmative action policies are needed because racial discrimination is not only practiced by individuals; it is also practiced by institutions. There are multiple components of affirmative action policies; these components include special criteria for admissions into professional and graduate school, special qualifications for employment, set-aside programs, and redistricting to establish minority districts. The focus of this paper is on set-asides. It examines the public works set-aside program in Louisiana to determine whether it has eliminated discrimination against minority firms in the awarding of public works construction contracts. Since discrimination is difficult to prove, it has become an accepted practice in affirmative action matters to use racial disparity as an index of racial discrimination. This paper also employs conventional

Purpose of the Paper

The purpose of this paper is to determine whether there is a disparity among minority construction firms and white construction firms in the awarding of public works construction contracts in Louisiana. The Supreme Court ordered in Croson that evidence must be documented and show statistical disparity between minority and non-minority firms by: (1) the number of construction firms which participate in public works construction contracts by race; (2) the amount of jobs awarded to minority firms compared to white firms; (3) the dollar amount of contracts awarded to minority and white firms. The paper's focus in this regard includes both prime contracting and subcontracting. This paper also examines whether there are problems in

⁵George Gilder, Wealth and Poverty, (New York: Basic Books, 1981).

the administration of the set-aside program in public works in Louisiana.

Methodology

Qualitative data analysis is used to determine whether disparity exists between minority construction firms and white construction firms in the construction industry. Two components of qualitative data analysis are employed in the paper: the historical approach to the study of public policy and content analysis. While content analysis has long been an accepted methodological technique, the historical approach to the study of public policy has gained widespread attention and acceptance as a methodological technique in recent years⁶. The specific application of these two approaches in the paper are as follows. The historical approach is used in the examination of the legislative history of set-aside policies in Louisiana and the implementation of these policies between 1985 and 1989. Content analysis is employed in the examination of Supreme Court cases and disparity studies. Also, interviews were conducted to provide additional information. Interviews were conducted with a small number of governmental personnel who work with the set-aside program in Louisiana. These person are employed with the Minority and Women Business Enterprises (MWBE) and the Department of Transportation and Development (DOTD). The MWBE is a subunit of the Department of Economic

⁶For works employing the historical approach to the study of public policy, please see Colleen Dunlavy, "Mirror Images: Political Structure and Early Railroad Policy in the United States and Prussia," Studies in American Political Development, 5 (Spring 1991): 1-35; John G. Kenberry, Reasons of State: Oil Politics and the Capacities of American Government (Ithaca, New York: Cornell University Press, 1988); John Kingdon, Agendas, Alternatives, and Public Policies (Boston, MA: Little, Brown and Company, 1984); Martin Shefter, "Party and Patronage," Politics and Society, 7 (1977) 404-51; Theda Skocpol and Gretchen Ritter, "Gender and the Origins of Modern Social Policies in Britain and the United States," Studies in American Political Development 5 (Spring 1991): 36-93.

Development, which examine the economic progress of minority and women businesses in Louisiana. In addition, it provides assistance to these businesses to increase economic development. DOTD provide state and federal public works construction contract to prime and subcontractor in the construction industry. Interviews were also conducted with selected construction firms which receive public works construction contracts from the Louisiana Department of Transportation and Development.

Literature Review

John C. Livingston wrote in Fair Game?: "It is no accident that the current reaction against affirmative action the demand for color blind laws, the insensitivity to social racism, the charges of reverse discrimination occurs in the context of meritocracy."⁷ Until 1967, meritocracy was used to share the same meaning as equality of opportunity. The meaning was described in a posttechnological, bureaucratized, corporate, consumption-oriented society. That associated its meaning with Darwin theory of social order.⁸

Darwin's theory was based on the idea that man is unequal by nature and minority and the poor would receive benefits by the "trickle-down process" in which the superior (white and wealthy) would provide for society. Also, the theory suggest that equality is a thin veil for malignant envy of the masses, and their fear of equality as a major threat to the stability of the system. These theories, as they relate to affirmative action, suggests that there is no need for

⁷John C. Livingston, Fair Game? (Sacramento, California, W. H. Freeman and Company, 1967), 122.

⁸Ibid., 123.

affirmative action because the superior few will take care of the masses. The concept of racial superiority sustained the longevity of racial discrimination in America.⁹

The quest for social justice became prevalent in the 1960s, as blacks and their allies directly challenged racial discrimination in the American society. In The Civil Rights Era, Hugh D. Graham provides an account of the civil rights movement and reforms of the 1960s and the early part of the 1970s. Graham's book offers a history of events that covered the presidential administrations of John Kennedy, Lyndon Johnson, and Richard Nixon. Graham examines the Civil Rights Act of 1964 and the Voting Rights Act of 1965, which banned discrimination against minorities, and shows how the liberals' agenda for non-discrimination policies that evolved into the controversial program of affirmative action. Graham also examines the "Philadelphia Plan", which is generally considered to be the first specific formulation of an affirmative action plan for minorities in the United States.¹⁰

Leslie W. Dunbar discusses in Minority Report the chronic problems of the minority experience in America. In respect to affirmative action programs, Dunbar suggest that such programs have been useful as temporary remedies for past discrimination. According to Dunbar, affirmative action is "worth nothing", by which he means that affirmative action does not reach beyond those who have prepared themselves to benefit from opportunities provided in the economy and the educational system. In addition, it dose not providing opportunities for majority of the minority population in its current capacity.¹¹ Dunbar conclude that political and

⁹Livingston, Fair Game?, 123.

¹⁰Hugh D. Graham, The Civil Rights Era (New York: Oxford University Press, 1990), 32.

¹¹Lesile W. Dunbar, Minority Report (New York: Pantheon Books: 1984), 211.

economic policies will settle problems experienced by minorities. Also, Dunbar suggests that minorities should not depend on the government to provide opportunity, but rather there should be a collective effort by all Americans to ensure social and economic mobility for all Americans.

There is only one scholarly publication on set-aside programs in Louisiana. In this study, John Lunn and Huey L. Perry conclude that there is disparity between minority and non-minority construction firms which participate in the Louisiana Department of Transportation and Development public works construction program, but that the disparity is not due to racial discrimination. Rather the disparity is due to the length of the existence of minority firm and the lack of capital to receive bonding and insurance of minority firms.¹²

**A Historical Analysis of Set-Aside Programs
in Public Works in The United States**

Minority set-asides were first authorized by legislation passed by Congress in the 1977 Public Works Employment Act (PWEA), which mandated expenditures of \$4 billion to stimulate a sluggish economy, particularly in the construction industry. The Secretary of Commerce allocated ten percent of those funds to minority firms. The pattern set by the PWEA has been followed by programs in the Department of Transportation and the Department of Defense. The 1982 Surface Transportation Assistance Act (Public Law 97-424), for example, it required that at least ten percent of all expenditures be provided to disadvantaged businesses for their goods and services. Under this program and its 1987 successor, 1982 Surface Transportation Act, the Department of Transportation distributes highway construction funds to state departments of

¹²John Lunn and Huey L. Perry, "Justifying Affirmative Action: Highway Construction in Louisiana," Industrial and Labor Relations Review 46 (April 1993): 446.

LIBRARY

transportation, which become responsible for implementing the set-asides program at the state level.¹³

The 1977 PWEA precedent has also been extended to other public works programs. For example, ten percent of the construction value of U. S. embassies abroad, ten percent of international development grants, and eight percent of National Aeronautics and Space Administration spending for the space station which is planned to be operational in July, 1997 are set-asides which have been enacted by Congress for minority businesses. As of 1991, these funds amounted to about \$1.5 billion a year.¹⁴

The concept of set-aside programs originated in Philadelphia, Pennsylvania. President Lyndon Johnson created a controversial plan to integrate the construction industry in Philadelphia. Racial problems in Philadelphia's construction industry began during World War II when 5,000 soldiers were required to end the racially triggered Philadelphia transit strike in 1944. In 1963, black protest against white union monopolies in the construction trade in Philadelphia triggered a second outburst of racial violence in the city. These two incidences initiated what is known as the "Philadelphia Plan."¹⁵ The objective of the Philadelphia Plan was to limit the control of the construction industry by conservative white builders and union leader. The Philadelphia Plan pioneered set aside programs in the construction industry.

The OFCC designed a model of contract compliance based on Philadelphia, which became known as the Philadelphia Plan. The OFCC model assumed that non-discrimination

¹³Tom Ichniowski, "Justice by the Number," ENR (September 2, 1991): 26.

¹⁴Ibid., 26.

¹⁵Hugh Graham, The Civil Rights Era: Origins and Development of National Policy (New York Oxford University Press, 1990), 278.

UNIVERSITY OF CALIFORNIA LIBRARY

programs were inadequate to uproot white job entrenchment and required building contractors to submit "pre-award" hiring schedules listing the number of minorities to be hired. Both builders and unions attacked the plan because of this minority provision. The American Federation of Labor and Congress of industrial Organizations (AFL-CIO) pressured Willard Wirtz, Secretary of the United States Department of Labors, and Pennsylvania construction contractors sued the Labor Department in the federal court, charging that the Philadelphia Plan violated the non-discrimination provision of the 1964 Civil Rights Act. Congress requested that President Johnson appoint someone to review contractual disputes. In doing so, the president appointed Elmer Staats, United States Comptroller, to resolve disputes and conflict in laws pertaining to contracts. Staats reviewed the Philadelphia Plan and found that the plan violated 1964 Civil Rights Act and ordered that the program be terminated. President Johnson did not challenge Staats decision. However, the dispute over the Philadelphia Plan continued during the newly elected President, Richard Nixon.¹⁶ Nixon's Secretary of Labor George P. Schultz revived the Philadelphia Plan in order to free the construction industry from the conservative white builder and unions leaders by allow the federal government to regulate and issue sanction against those who monopolize the construction industry. Nixon hoped to expand the black middle class and to split the Democrats' black-labor alliance. Nixon successfully united with Republicans and liberal Democrats to defeat the efforts of the conservative white builder and union leaders to destroy the Philadelphia Plan.¹⁷

In 1970, the Labor Department's Order No. 4 required all federal contractors to submit

¹⁶Graham The Civil Rights Era, 58.

¹⁷Ibid., 322-345.

~~the~~ affirmative action plans modeled on the Philadelphia Plan. Numerical goals and ~~measures~~ were required to achieve a fair representation for minorities in the work force. A ~~year~~ later, the Supreme Court affirmed lower court rulings that the minority preference of the ~~Philadelphia~~ Plan did not violate the 1964 Civil Rights Act.¹⁸ Although the Philadelphia Plan ~~strengthened~~ minority participation in the construction industry, set-aside programs continued ~~to be~~ challenged by white conservatives. White conservatives achieved their first major victory ~~in~~ their opposition to set-aside programs in the construction industry in City of Richmond v. Croson.¹⁹

The Supreme Court ruled in Croson that set-aside programs require strict-scrutiny, Fourteenth Amendment analysis and a specific finding of past discrimination in order to found constitutional. The Supreme Court's decision invalidated a Richmond, Virginia minority business enterprise utilization ordinance, because the city of Richmond had not established an adequate factual basis to justify enactment of the ordinance and because the ordinance was not narrowly tailored to accomplish a remedial purpose. However, the Court did not eliminate ~~the~~ affirmative action programs initiated by local government where there is factual evidence ~~to~~ justify anti-discrimination programs. The court required affirmative action programs to be narrowly tailored to correct the effects of discrimination in the marketplace. The court stressed ~~that~~ evidence must be documented with statistical disparities between the availability of minority-owned business and non-minority-owned businesses by the percentage of contracts that are awarded. Documentation must also include administrative and legal findings of discrimination

¹⁸Graham, Civil Rights Era, 52.

¹⁹City of Richmond v. Croson 57 U.S.L.W. 4132, (January 23, 1989)

and testimonials regarding discrimination in the contracting industry. Croson was the second major case questioning set-aside programs since the establishment of the Philadelphia Plan. Unlike the first case Fullilove v. Klutznick,²⁰ in which the Court completely ruled in favor of affirmative action interest, in Croson the Court's ruling was mixed, offering a partial victory to both pro- and anti- affirmative action interests. Minorities and women were pleased that set-asides were allowed to continue in certain conditions. Conservative whites appreciated the Court's insistence that in order for a jurisdiction maintain or institute a set-aside program, the jurisdiction had to conduct a study to determine whether discrimination against minorities and women had occurred in the jurisdiction and, if it had, whether a set-aside program was necessary to eliminate the discrimination.

A Historical Analysis of Set-Aside Programs in Public Works in Louisiana

Louisiana passed legislation in 1984 which empowered the Secretary of the Department of Transportation and Development (DOTD) to establish a set-aside program. The program was authorized to allocate ten percent of state funds for highway construction to minority firms. The legislation did not make a set-aside program mandatory and it was not enforced on the state.²¹ Louisiana state legislators revised the state's provision on set-aside in 1992, as an effort to improve minority participation in DOTD construction contracts in Louisiana.

This legislative affirmative action policy attempted to increase the number of minority

²⁰Fullilove v. Klutznick, 448 U.S., 478.

²¹LSA R.S. 48:243 (September 1984).

construction firms competing for set-aside construction contracts in public works by mandating that a certain percentage of the awards be awarded to minority firms. The Louisiana commissioner of administration and the executive director of Louisiana Division of Minority and Women's Business Enterprise program is responsible for locating minority and small business to perform set-aside procurement awards. The set-aside allows ten percent of public works construction contracts to be used to provide an opportunity for minority to participate in the construction industry.²² Despite the set-aside program, minority firms continue to experience low participation in public works contracts.

Governor Buddy Roemer established a Task Force on Disparity in State Procurement Participation in March 1989. The purpose of the task force was to determine whether discrimination exist against minority-owned firms in the public works arena in Louisiana. The task force commissioned two local university professors to conduct a study to determine whether discrimination exist in the awarding of public works construction contracts in Louisiana. The study using a regression analysis to determine whether significant disparities exist between minorities and non-minorities. The findings of the study were inconclusive. The regression analysis found no statistical evidence of discrimination in construction employment earnings and public works contracting. However, the historical research component of the study asserted that discrimination against minority businesses by the State of Louisiana and white construction contractors existed.²³ Because the results of the study were inconclusive, the task force

²²House Bill No. 1534, Act 797, Section 1 R.S. 36:109, 1993.

²³John Lunn and Huey L. Perry, "An Analysis of Disparity and Possible Discrimination in Louisiana Construction Industry and State Procurement System and Its Impact on Minority-owned and Women-owned Firms Relative to the Public Works Arena," Volume I (April 1990).

commissioned a second study to determine whether discrimination existed in the awarding of public works construction contracts in Louisiana. The second study was done by a consulting firm in Atlanta in consultation with the authors of the first study. The second study analyzed data from the first study and included other subunits associated with public works construction contracting to identify the possibility of discrimination in DOTD contracting. The findings in this study indicate that discrimination exist in the construction industry in terms of credit and bonding, and in the amount of money awarded to minority firms as compared to non-minority construction firms.²⁴

Data Analysis

The data analyzed in this section of the paper come from a disparity study of DOTD public works construction contracts. Table 1 shows the number of prime contracts by race which were awarded DOTD contracts from 1985 to 1989. During these years, there were 274 firms that received awards from DOTD. Of these, 257 were white-owned and 17 were minority firms. This means that 93.8 percent of the contracts were awarded to white firms and 6.2 percent were awarded to minority firms (those percentages are not shown on the table). Also, 93.8 percent of white firms received an average of 6.04 prime contracts per firm, while minority firms received an average of 3.59 percent of prime contracts per firm. This data thus constitute a double disadvantage for minority firms. Not only were they severely disadvantaged in terms of the number of firms which received contracts from DOTD but they were also disadvantaged

²⁴ D. J. Miller and Associates, "An Analysis of Disparity and Possible Discrimination in Louisiana Construction Industry and State Procurement System and Its Impact on Minority-owned and Women-owned Firms Relative to the Public Works Arena," Volume II (June 1991).

is ~~an~~ ~~of~~ the average number of jobs received from DOTD. In addition, white firms receive ~~five~~ percent more than the average amount of money earned by all firms and minority firms 33 percent less than the average amount of money earned by all firms. The maximum amount of ~~money~~ awarded to all firms was \$32,883,238, which was awarded to white firm. The maximum ~~amount~~ of money received by a minority firm was \$1,155,598. The minimum amount of money ~~is~~ the smallest amount of dollars awarded to a construction firm between 1985 and 1989.

Table 1 About Here

Table 2 provides additional and more detailed information on the number of jobs awarded ~~to~~ prime contractors by race. Of the 140 firms which received at least one job from DOTD ~~between~~ 1985 to 1989, 127 of those firms were white as compared to 13 of those firms which ~~were~~ minority firms. Of the 41 firms that received at least two job, white firms received 40 of ~~those~~ jobs and minority only one job. Of the 45 firms that received three to five job, 43 were ~~white~~ firms and two were minority firms. Collapsing the next three rows in the table in a ~~summary~~ assessment reveals considerable disparity in the awarding of prime contracts to white ~~and~~ minority firms. 35 firms who received 6 to 30 jobs, all these jobs were awarded to white ~~firms~~, minority firms did not receive any of these jobs. Of the four firms that received between ~~31~~ and 40 jobs, three of those were white and one minority. Again, the next three rows are ~~collapsed~~ into a summary assessment, and the assessment reflects the disparity of the awarding ~~of~~ contracts to white and minority firms. Of the eight firms that received between 41 and 100 ~~jobs~~, white firms received all eight compared to no jobs received by minority firms.

Additionally, a white firm was the only firm to receive more than 100 job. Overall, Table 1 and 2 indicate that not only are there fewer minority firms than white firms which received prime contracts, but also white firms receive much more jobs frequently than minority firms. This is probably one contributing factor which prevent minority firms from surviving in the construction industry.

Table 2 About Here

Table 3 presents data on subcontracting firms which participate in public works construction contracts awarded by DOTD. The table shows that of the total of 1,005 subcontracting firms, 858 were white and 147 are minority. The average dollar amount awarded to subcontractors was \$212,368. The average dollar amount awarded to a white firm was \$221,503, which was ten percent higher than the average amount awarded to all firms. By comparison, the average amount awarded to a minority firm was \$158,050 which is 13 percent less than the average amount received by all firms and 14 percent less than the average amount received by white subcontractors. The minimum amount of money awarded to all subcontractors was \$140, which was awarded to a white subcontractor. By comparison, a minority firm was awarded the minimum amount of \$1,590. The maximum amount of \$10,994,000 awarded to a subcontractor was received by a white subcontractor as compared to the maximum amount of \$2,173,506 received by a minority subcontractor. Although there was a significant larger number of minority subcontractors in relationship to minority contractors which received jobs from DOTD, minority firms receive much fewer jobs and much less money per job than whites

as both contractors and subcontractors.

Table 3 About Here

Table 4 provides data on the number of jobs awarded to subcontracting construction firms by race. Of the 582 subcontracting firms which participated in DOTD subcontract work between 1985-1989, 533 white firms received at least one job as compared to 49 minority firms receiving one job. Of the 151 firms that received two job, 125 were white firms and 26 minority. Of 126 firms that received three to five job, 99 were white compared to 27 minority firms. Of the 65 firms which received six to ten jobs, 45 were white and 20 were minority. Of the 43 firms which received 11 to 20 jobs, 26 were white as compared to 17 minority. Collapsing the next four rows into a summary assessment shows continuing disparity between white and minority firms in subcontract participation in DOTD public works construction. Of the 35 firms that received between 21 and 75 jobs, 27 of those firms were white as compared to eight minority firms. Only one firm a white firm, received 76-100 jobs. Additionally, only two firms, both white, received more than 100 jobs. Overall, Table 3 and 4 indicate not only are there fewer minority firms participating in DOTD construction subcontract work than whites, but white firms receive a much greater number of jobs than minority firms. This is probably an additional factor which prevents minority firms from surviving in the construction industry.

Table 4 About Here

Overall, the data analyzed in the four tables indicate that substantial disparity existed between the participation of minority and white firms, both as prime contractor and subcontractors, in DOTD's public works construction contracting between 1985 and 1989. The disparity between minority and white firms' participation in DOTD's public works construction contracting as both prime contractors and subcontractors during the period examined probably is attributable to three factors: (1) continued discrimination against minority firms, both by the state and by firms; (2) lack of enforcement of the set-aside program by the state due to the decline in the state's economy in 1982; (3) problems in the state's administrative structure for implementing the set-aside program. The first two factors have been examined in this section of the paper. The third factor is examined in the next section of the paper.

An Analysis of the Administrative Structure for Implementing the Set-Aside Program in Public Works in Louisiana

This section of the paper examine the administrate structure for implementing the set-aside program public works in Louisiana. It investigates the possibility of administrative problems as a contributor to the unsuccessful attempt by the set-aside program to eliminate disparity in public works contracting. Some contractors and administrators agree with that there are problems within the state administration of the set-aside program. Opponents of the set-aside program have challenged the assumption that administrators of the set-aside program are responsible for minority low participation in DOTD contracting. Rather, they hold minority firms accountable for their failures, as result of lack of skill, capital and financial stability to compete in the construction industry.

During a Interview with several contractors, each of them identified various problems

in the construction industry. One stated that "minority are being pushed out of the system because of the design of the system. Affirmative action has its benefits, but as a whole, it is structured to keep minorities out, particularly blacks."²⁵ An administrative officer of affirmative action stated that one of the most extreme problems with the Louisiana set-aside program is the commitment of affirmative action officers and staff members in achieving administrative goals. In some cases, set-aside program can be used to work against the group that should be the beneficiary of the program. This is partially due to administrators using resources provided for set-aside to seek personal and professional benefits that conflict with the goals of the set-aside program.²⁶

Another interviewee expressed that it is difficult for blacks to compete with white contractors because of the lack of resources available to blacks. This particular contractor struggled several years to get the opportunity to compete for public works construction contracts in Louisiana. However, it was not until his business merged with a white construction firm, that he was able to compete for contracts. According to this person, "resources that once were not available were available. I had no problems with the banks, bonding agencies, and public officials."²⁷ A set-aside program compliance officer agreed that many minority firms encounter discrimination, most often in efforts to obtain bonding and insurance is required for bidding on construction contracts. This discrimination is a result of agencies stereotyping minority firms and simply avoid doing business with those firms because they do not want to

²⁵Anonymous Interview, New Orleans, Louisiana, July 2, 1993.

²⁶Anonymous Interview, Baton Rouge, Louisiana, July 19, 1993.

²⁷Anonymous Interview, New Orleans, Louisiana, July 7, 1993.

take the risk. In this regard, affirmative action policies have not been effectively enforced on the state level. According to the set-aside officer interviewed, resources are available but the administration have not successfully allocated those resources to assist minority firms based upon the lack of confidence in the program. This have raised concern among minorities and have caused them to question the validity of the set-aside program.²⁸

In conclusion, often minority contractors front for white construction firms or take part in a subcontracting role. The set-aside program have good intention but are not effective in enforcing the law because of institutional racism within the program. When asked the question, From your point of view, are black being given an equal opportunity in the construction industry?, One interviewee responded: No, one reason for this is that minority firms do not have the capital nor do they have financial backing for bonding and insurance, in addition to the "good old boy network" which is very influential in Louisiana.²⁹ Even with the existence of a set-aside program, inequality still exist. The set-aside program primary purpose was to eliminate such practices and provide managerial and financial assistance to minority firms in the construction industry.³⁰

Testimonies prevail that problems exist in public works construction contracting. Although some officials of affirmative action and minority contractors agree that the set-aside program has not worked in the best interest of minority firms, few efforts have been made to improve the set-aside program. In addition, these officials agree that the problems in set-aside

²⁸Anonymous Interview, Baton Rouge, Louisiana, July 19, 1993.

²⁹Anonymous Interview, New Orleans, Louisiana, July 2, 1993.

³⁰For more information on Louisiana's state provision on set-aside contracting, please see Section 1. R.S. 39:1734 and Chapter 19 of Title 39 of the Louisiana Revised Status of 1950.

programs are not consequences of the economic stability of the firms. Rather, the attitudes and commitment to enforce equality in the construction industry by the administration of affirmative action.³¹

Conclusion

The purpose of this paper was to examining the possibility of disparity between minority and non-minority construction firms participation in public works construction contracts in Louisiana. The findings in this paper identify disparity in DOTD public works construction contraction. This disparity is defined in terms of the number of job received by minority prime firms and subcontractors and the amount of dollars awarded to both minority and white prime firms and subcontractors. In part, discrimination is a factor which contribute to the disparity among minority and non-minority firms. This paper finds that discrimination plays a major role in excluding minorities from participating in construction contracts. The paper also finds that problems in the administration of the state's set-aside program also contributes to the set-aside problem. Discrimination exist in all facets of American society. Affirmative action programs such as set-asides in public works have not been effective in terms of increasing minority participation in public works construction. In conclusion, this research suggests that future research should focus on the administrative structure of affirmative action programs in order to identify problems that reduce the effectiveness of these programs

³¹Anonymous Interview, Baton Rouge, Louisiana, July 19, 1993.

Table 1

Summary Statistics for Prime Contractors with DOTD, 1985-1989

	All Firms	White	Minority
No. of Firms	274	257	17
Avg. No. of Jobs	5.89	6.04	3.59
Avg. \$ Amount	1,472,613	1,538,344	478,912
Min. \$ Amount	608	608	35,639
Max. \$ Amount	32,883,238	32,883,238	1,155,598

Source: Disparity Study Survey

Table 2

Number of Firms Receiving DOTD Prime Contracts, 1985-1989

No. of Jobs	All Firms	White	Minority
1	140	127	13
2	41	40	1
3-5	45	43	2
6-10	17	17	0
11-20	13	13	0
21-30	5	5	0
31-40	4	3	1
41-50	3	3	0
51-75	5	5	0
76-100	0	0	0
>100	1	1	0

Source: Disparity Study Survey

Table 4

Number of Firms Receiving Subcontracts, 1985-1989

No. of Jobs	All Firms	White	Minority
1	582	533	49
2	151	125	26
3-5	126	99	27
6-10	65	45	20
11-20	43	26	17
21-30	11	10	1
31-40	11	7	4
41-50	9	7	2
51-75	4	3	1
76-100	1	1	0
>100	2	2	0

Bibliography

- Clark, Kenneth B.** "Affirmative Action: Problems, Remedies and Prognosis in the 1980s." Consultation on the Affirmative Action Statement of the U.S. Commission on Civil Rights. Volume I, February 10, 1981.
- Dunbar, Lesile W.** Minority Report. New York, New York: Pantheon Books, 1984.
- Gilder, George.** Wealth and Poverty. New York, New York: Basic Books, 1981.
- Graham, Hugh D.** The Civil Rights Era: Origin and Development of National Policy. New York, New York: Oxford University Press, 1990.
- Graham, Hugh D.** "The Origins of Affirmative Action: Civil Rights and the Regulatory State." Annals, 523, September 1992.
- Ichniowski, Tom.** "Justice by the Number." ENR, September 2, 1991.
- Livingston, John C.** Fair Game?. Sacramento, California: W. H. Freeman and Company, 1967.
- Lunn, John and Huey L. Perry.** "Justifying Affirmative Action: Highway Construction in Louisiana." Industrial and Labor Relation Review; v. 46, 63, April 1993.
- Reynolds, Williams B.** "Tending the Civil Rights Garden." Wake Forest Law Review. v. 25 1990.

APPROVAL FOR SCHOLARLY DISSEMINATION

The author grants to the **Southern University School of Public Policy and Urban Affairs** the right to reproduce, by appropriate methods, upon request, any or all portions of this research project.

It is understood that "request" consists of the agreement on the part of the requesting party, that said reproduction is for his personal use and the subsequent reproduction will not occur without written approval of the author of this research project.

The author of the research project reserves the right to publish freely, in the literature, at any time, any or all portions of this research project.

Author

Alfred B. ...

Date

July 26, 1993

APPROVAL FOR SCHOLARLY DISSEMINATION

The author grants to the **Southern University Library** the right to reproduce, by appropriate methods, upon request, any or all portions of this **research project**.

It is understood that "request" consists of the agreement on the part of the requesting party, that said reproduction is for his personal use and the subsequent reproduction will not occur without written approval of the author of this **research project**.

The author of the research project reserves the right to publish freely, in the literature, at any time, any or all portions of this **research project**.

Author

John Boyd

Date

July 26, 1993