traditionally have identified two different types of discrimination. "Disparate treatment" involves intentional race or sex discrimination.[158] An example of disparate treatment is where a white man is hired instead of a more qualified woman. "Disparate impact" involves practices that are "fair in form, but discriminatory in operation."[159] An example of disparate impact is the use of an educational requirement that is less likely to be possessed by African Americans than by whites and that has no bearing on job performance.

HUBs also can suffer from disparate treatment and disparate impact. An example of disparate treatment in this context is where a prime contractor selects a white male-owned subcontractor over a more qualified female subcontractor because of the owner's refusal to deal with women. Disparate impact might occur when a government agency requires five years of experience in a type of contracting where experience is not a good predictor of performance. Such a requirement would tend to eliminate a disproportionate number of minority firms since such firms tend to be newer with less experience.

The most blatant form of disparate treatment is outright discrimination against minorities and women. There may be some white men who simply do not like minorities and women and may favor white men over them.[160] However, disparate treatment also can operate in a much more subtle manner. White men might not think of themselves as practicing discrimination even though they have

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[158] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

[159] *Griggs v. Duke Power co.*, 401 U.S. 424, 431 (1971).

[160] Steven Askin, "Blood, Sweat and Steel," *Black Enterprise*, May 1984 and Sylvia A. Law, "Girls Can't Be Plumbers--Affirmative Action for Women in Construction: Beyond Goals and Quotas," *Harvard Civil Rights--Civil Liberties Law Review*, Winter 1989, detail some of the difficulties encountered by minorities and women, respectively.

stereotypes in mind for minorities and women.[161] They might perceive minorities and women to be less qualified and less competent, and may make discriminatory business decisions based upon these beliefs.[162] They might not even consider minorities and women as potential subcontractors or business partners: they first think of the same white male subcontractors they have always used to meet their need for a subcontractor.

Disparate impact can result when members of a group are less likely to possess certain criteria that are necessary to get ahead, but which are, in fact, not necessary for operating an efficient business. For example, business contacts among family and friends are important. Generally whites are better situated in industry than minorities; minorities on the other hand, often have fewer and less powerful contacts since family contacts are usually also minorities. Minorities and women would suffer a further disadvantage if race and gender stereotypes made potential family connections less useful for them than for white men. While friendships or acquaintances also provide important

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[161] A related problem has been highlighted in the "statistical theory of discrimination" developed by economists. It is difficult to assess an employee's productivity without actually hiring him or her. Employers therefore try to guess at the productivity of applicants by looking at factors that are correlated with productivity. If certain groups have lower productivity *on average* (perhaps because of the long-lived effects of societal discrimination), employers may be less likely to hire members of this group. For example, if African Americans have gone to lower-quality high schools on average (e.g., because of segregation) and if employers cannot determine high school quality, they might use race as a proxy for high school quality. The same argument may apply to relationships between businesses. See Dennis J. Aigner and Glen G. Cain, "Statistical Theories of Discrimination in Labor Markets," *Industrial & Labor Relations Review*, vol. 30, January 1977, p. 175-187.

[162] See, generally, Ann Newman, "Career Advancement: Does Gender Make a Difference?" 23 *American Review of Public Administration* 361 (1993) (exploring barriers faced by women in the workplace); Eileen P. Kelly, et al., "Sex Stereotyping in the Workplace: A Manager's Guide; Women in Business," 36 *Business Horizons* 23 (1993) (exploring gender stereotyping as a barrier to women in business); Judith Schonbak, "Minority Business Owners Can't Open Big Businesses' Doors; They are Allowed only Token Access," 21 *Business Dateline* 40 (1992) (analyzing minority stereotypes as a barrier to success); Terry L. Bach, "Gender Stereotyping in Employment Discrimination: Finding a Balance of Evidence and Causation Under Title VII," 71 *Minn. L. Rev.* 1251 (1993).

networking connections, the tendency for white men to choose to associate more with other white men leaves minorities and women again disadvantaged.[163]

Lesser social capital on the part of minorities and women may accompany and compound problems associated with lesser financial capital. On average, minorities and women have less financial capital than white men, and therefore encounter more problems in attempting to start a business. Also, because their companies are disproportionately newer and smaller, which may be the result of past or present discrimination, they will be especially subject to problems common to all small companies. Some of the problems might reflect actual limitations on the capabilities of small or new firms, but other problems may be the result of inaccurate or broad perceptions that disproportionately injure HUBs.

A variety of public and private institutions make decisions that affect the ability of minorities and women to operate their businesses:[164]

- prime or general contractors;
- banks and other financial institutions;
- bonding companies and sureties;
- suppliers of materials; and
- state and local governmental agencies.

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[163] The role of networks in the business world is similar to the role of hiring through employee referrals in the employment world. According to Schlei and Grossman, "Numerous courts have found that word-of-mouth recruitment by a substantially all-white work force has the effect of replicating the racial characteristics of the existing work force . . . ." Barbara L. Schlei and Paul Grossman, *Employment Discrimination Law* 571 (BNA 2nd ed. 1983). See *Local 53, International Association of Heat & Frost Insulators v. Vogler*, 407 F.2d 1047, 1054-55 (5th Cir. 1969), where the court invalidated a union rule that restricted membership to sons or close relatives of current members.

[164] Several of these institutions—prime and general contractors, bonding companies, and sureties—are relevant primarily to construction firms.

The decisions made by these institutions could be infected by disparate treatment or be based on criteria that have a disparate impact on minorities or women.

We have also focused on a number of particular aspects of the State's procurement process that could have a disparate impact on HUBs:

- bonding requirements;
- insurance requirements;
- cost of completing proposals;
- obtaining working capital; and
- bid deadlines.

II. Overview of Race and Sex Discrimination in Texas

Discrimination is an attitude that pervades many people's personal and business decisions. Without laws and sanctions against discrimination, we would expect that individuals who discriminate in certain decisions will discriminate in other decisions as well. Companies that discriminate against minority employees can be expected to discriminate against minority suppliers and minority customers. We would expect that male employers who sexually harass female employees are likely to harass women in other subordinate relationships.

The incentives to be covert about discrimination together with the fact that discriminatory attitudes tend to invade many aspects of life suggest that instances of identified, overt discrimination represent only a small fraction of the instances of discrimination that take place. Consequently, in assessing whether there is discrimination against HUBs in Texas, it is important to look beyond discrimination against HUBs alone. Evidence of discrimination in employment, housing, education, lending and public accommodation, as well as the existence of racial tensions, are all relevant.

There is another reason to consider discrimination against minorities and women in general: there is little, if any, judicial record of discrimination against *businesses* owned by minorities or women. One reason that no record exists is that antidiscrimination laws generally apply to individuals—not to businesses. As noted by one scholar, "no federal statute ever has been adopted specifically to bar racial discrimination in private commercial transactions between two business firms."[165] The United States Supreme Court has observed that "a corporation, as a faceless creature of the state, may not assert claims of racial discrimination under the Fourteenth Amendment on its own behalf, and cannot be the 'target' of racial discrimination."[166] This leaves minorities and women without a clear legal remedy when faced with discriminatory actions against their businesses.

A. Historical Overview of Discrimination in Texas

Discrimination against African Americans in Texas dates back to the days of slavery when the Texas Constitution expressly endorsed slavery as a legitimate institution.[167] Even after slavery was abolished, Texas included within its Constitution a prohibition on the emancipation of slaves.[168] Other early law included a State penal code provision that made it a crime to teach Spanish in public schools.[169] Furthermore, in some cases, Hispanics reported being denied access to public services and

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[165] Robert E. Suggs, "Racial Discrimination in Business Transactions," 42 *Hastings L. Journal* 1257, 1263 (1991).

[166] *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 263 (1977). Note, however, that the Court in *Croson* accepted the standing of a white-owned firm to challenge a minority set-aside program, and, in the Jacksonville case, the Court allowed a trade association standing as a plaintiff. See, *Northeastern Florida Chapter of Associated General Contractors v. Jacksonville*, U.S. 113 S.Ct. 2297, 124 6.Ed. 2d 586 (1993).

[167] Texas Constitution of 1845, Art. 8.

[168] Texas Constitution of 1861, Art. 8.

[169] 1928 Penal Code Art. 28.88.

public places.[170] Finally, for many years, the State regulated the places where women worked and maintained segregated educational facilities for women.[171,172]

B. Voting Rights Cases

In the more recent past, a number of voting rights cases have charged that Texas engaged in discriminatory legislative redistricting. For instance, in *Graves v. Barnes*,[173] the plaintiffs attacked the constitutionality of a State legislative redistricting plan charging that the State had engaged in "invidious discrimination against certain racial and ethnic groups" as a result of multi-member House districts in nine counties. The Court considered the political history of Texas and stated:

> Texas has . . . a history pockmarked by a pattern of racial discrimination that has stunted the electoral and economic participation of the black and brown communities in the life of the state. The isolation of Mexican-Americans arising from such discrimination has been further exacerbated by cultural and language barriers. The all-white primary system, the poll-tax, and the most restrictive voter registration procedures in the nation have left behind them a pattern of political apathy that continues to inhibit the participation of minority groups in the political process. . . . [T]he current electoral system . . . retains many features that were found in the original proceedings to facilitate minority exclusion.[174]

The Court held that seven out of nine of the challenged districts denied African Americans and Hispanics access to the political process.[175]

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[170] Pauline Kibbe, *Latin Americans in Texas*, University of New Mexico Press, 1946. See also, *Cisneros v. Corpus Christi Indep. School Dist.*, 324 F. Supp. 599, 612 nn.38, 40 (S.D. Tex. 1970).

[171] See, for example, Texas Civil Code, 1925, Art. 5178.

[172] *Id.* Art. 26.25, 26.28.

[173] 378 F. Supp. 640 (W.D. Tex. 1974).

[174] *Id.* at 643.

[175] *Id.* at 644.

C. Educational Opportunity

In other cases, Courts have found that minority students were deprived of equal access to educational opportunities. In *Sweatt v. Painter*,[176] the Supreme Court held that Texas had violated the Equal Protection Clause of the Constitution when it refused to admit an African-American applicant to the University of Texas Law School because of his race. At the more basic public education level, the Court found, in *Cisneros v. Corpus Christi Independent School District*, that a "historical pattern of discrimination . . . contributed to the . . . substantial segregation of Mexican-Americans" in Texas schools.[177] Likewise, in a line of cases involving the Austin Independent School District, the Court found that both African-American and Mexican-American students had suffered from the school district's intentional acts of race discrimination.[178]

In *Hopwood v. Texas*, a recent case in which the racial preference admission policies at the University of Texas School of Law were challenged, the Court described the above cases and others in its review of the history of discrimination in the Texas school systems.[179] The Court noted that many Texas school districts had been "found to practice official discrimination against black and Mexican-American students," and that as of May 1994, desegregation lawsuits were pending against more than forty Texas school districts.[180] At the level of higher education, while the Court described the *Sweatt* case as the "most flagrant incident of state-sanctioned discrimination" against African

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[176] 339 U.S. 629 (1950).

[177] 324 F. Supp. 599 (S.D. Tex. 1970).

[178] *United States v. Texas Educ. Agency*, 267 F.2d 848 (5th Cir. 1972); *United States v. Texas Educ. Agency*, 564 F.2d 162 (5th Cir. 1977).

[179] *Hopwood v. Texas*, 1994 U.S. Dist. LEXIS 11870.

[180] *Id.* at 6.

Americans at the University of Texas,[181] it also described a record of other discriminatory policies. For example, in the 1950s and 1960s, Mexican-American students were segregated in on-campus housing and barred from participating in most university-sponsored organizations. African Americans, in turn, were prohibited from living in or visiting white dormitories. In the mid 1970s, the Department of Health, Education and Welfare's Office for Civil Rights opened an investigation into the Texas system of higher education. This investigation found that "Texas had 'failed to eliminate vestiges of its former de jure racially dual system of public higher education, a system which segregated blacks and whites,'" and that Hispanics were "significantly underrepresented in state institutions."[182] In 1983, Texas responded to this investigation with a plan that was accepted by the Office for Civil Rights as being in compliance with Title VI.[183]

D. Public Housing

The Court's decision in *Young v. Pierce* found discrimination in Texas public housing projects.[184] In that case, African-American applicants and residents of public housing brought an action against the Department of Housing and Urban Development (HUD) alleging that HUD knowingly maintained a system of racially segregated housing in 36 East Texas counties. Based on information and documentation provided by HUD, the Court determined that more than 90% of the project sites were either predominantly white or predominantly African-American. A majority of these sites were completely segregated. The Court also determined that HUD was fully aware of the segregation in its public housing projects. Based on this evidence, the Court held:

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[181] *Id.*

[182] *Id.*

[183] Title VI prohibits discrimination that violates the equal protection clause of the Fourteenth Amendment and binds on recipients of Federal financial assistance, such as, in this instance, the University of Texas.

[184] 628 F. Supp. 1037 (E.D. Tex. 1985).

> HUD has intentionally and knowingly continued to promote purposefully segregated housing in the class action counties. It is beyond dispute that the Constitution prohibits the government from funding racial discrimination with the public dollar. Indeed, *any* tangible assistance to segregation is prohibited if it has a "significant tendency to facilitate, reinforce, and support private discrimination."[185]

Despite the Court's order to desegregate the 36 counties involved in the lawsuit, desegregation efforts have been largely unsuccessful. The situation in Vidor, Texas is illustrative. Vidor had no African-American residents until February 1993, when the federal government assumed control of a public housing project that the local government had been unable, or unwilling, to desegregate. Several families moved in, but by autumn 1993, all the African-American residents had left Vidor, complaining of racial threats, taunts, bomb threats and Klu Klux Klan (KKK) demonstrations.[186]

E. Insurance and Mortgage Lending

Other evidence of discrimination appears in the private insurance and home mortgage industries. A recent study on home mortgage lending practices in Texas analyzed the percentage of home loans received by African-American and Hispanic residents in 1992.[187] The study found that although 12% of the State's population in 1992 was African-American and 26% was Hispanic, African Americans received only 4.2% and Hispanics received only 11.8% of the loans approved. Those African Americans who applied for loans were denied at a rate greater than two times that of white applicants.[188] Hispanic applicants were denied at a rate just below two times that of white applicants. The study found that the denial rate did not decrease with a corresponding increase in

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[185] *Id.* at 1052 (emphasis in original).

[186] "Four Black Families Are Moved Into All-White Housing Project in Texas," *Los Angeles Times*, January 14, 1994, p. A-7, Col. 1; Sam Howe Verhovek, "Blacks Moved to Texas Housing Project," *The New York Times*, January 14, 1994, p. A-20, Col. 4.

[187] Dr. Robert H. Wilson, *Racial/Ethnic Disparities in Home Mortgage Lending in Texas*, May 1994.

[188] *Id.*

income. In fact, wealthier African Americans and Hispanics encountered more rejection than their poorer counterparts, suggesting that differences in family incomes cannot explain the racial disparity in rejection rates.[189]

Nor does the gap appear to be closing. A number of community groups, including the Black State Employees Association, recently protested a bank swap in Houston contending that neither of the banks involved had fulfilled its obligations under the Community Reinvestment Act. The group's allegations led to a complaint filed with the Office of the Comptroller of the Currency, which charges that one of the banks has made only 15 mortgage loans totaling $204,000 to African Americans in 1993, while it made 565 mortgage loans worth $29.1 million to white families.[190]

The findings from a recent study regarding the availability of homeowners' insurance in Texas suggest a similar gap in homeowners' insurance coverage.[191] The Texas Office of Public Insurance Counsel ("OPIC") recently prepared a report documenting insurance companies' behavior towards minorities, who generally reside in older homes that were valued less than the metropolitan area's average, and often concentrated in areas close to "high crime" or commercial areas.[192] The OPIC study reviewed the underwriting guidelines of most of the State's insurers and found that:

(1) most insurers provided limited access to coverage for lower value homes;[193]

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[189] *Id.* A similar study conducted in Dallas in 1989 also found that wealthy African Americans and Hispanics had far more trouble obtaining loans than wealthy whites. Kimberly Blanton, "Can Dallas Bankers Serve the City's Southside?" *Dallas Times Herald*, November 4, 1990.

[190] James C. Allen, "Bankers Feel Heat From Minority Protest Group," *Dallas Business Journal*, December 10, 1993.

[191] See Statement of Amy Johnson, Office of Public Insurance Counsel, Hearing on Redlining, Houston, Texas, March 31, 1994 (regarding Office of Public Insurance Counsel's Underwriting Report).

[192] *Id.*

[193] Insurer's actions that limited access to coverage included offering limited coverage, higher rates, and outright denial of coverage.

(2) most insurers provided limited coverage for older homes, like those often located in the inner cities;

(3) many insurers refused to provide insurance if the home was located in an undesirable area; and

(4) a significant portion of insurers denied insurance to those who had no credit history or a poor credit rating.[194]

Based on these findings, OPIC concluded that the insurers were discriminating against low income persons living in the inner city, most of whom are minorities.[195] OPIC's finding of race discrimination is further supported by statistics that show the percentage of homeowners with insurance decreases as the non-white concentration of a neighborhood increases.[196]

F. Employment Discrimination

In a number of cases, courts have found sex discrimination on the part of Texas employers. In *Cortes v. Maxus Exploration Co.*,[197] the plaintiff brought suit against her former employer for sexual harassment under Title VII. The court found that shortly after the plaintiff started working for Maxus, her supervisor began propositioning her, requesting sexual favors, making lewd remarks about her body, telling her vulgar jokes, and showing her pornographic materials. Although plaintiff complained, her employer took no action. Instead, she was told to imagine that the supervisor's advances and comments "were nothing more than little pink elephants and that when he [the

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[194] *Id.*

[195] *Id.* Although the four practices identified could be considered "standard business practices" in the insurance industry, because minorities on average have lesser incomes and lesser net worth than the white majority, such practices have a disparate impact on minorities.

[196] *Id.*

[197] 977 F.2d 195 (5th Cir. 1992).

management representative] snapped his fingers, she should forget them." The plaintiff later resigned and filed suit. The court held that she had been sexually harassed and constructively discharged.[198]

In *Meyer v. Brown & Root Construction*,[199] the plaintiff was employed as a warehouse helper at Brown & Root's construction site. Her initial duties included coding equipment and furniture, issuing warehouse tickets, and preparing accounting records, reports, and inventories. She was not engaged in any heavy manual labor. Shortly after the plaintiff informed her employer that she was pregnant, her supervisor hired her replacement and instructed her that she would be working in the warehouse performing manual labor tasks. When the plaintiff explained that such duties could cause harm to her or her unborn child, her supervisor snickered. The plaintiff subsequently quit her job and filed a lawsuit. The Court determined that the plaintiff was constructively discharged because of her sex in violation of Title VII.

Discrimination in the workplace also affects minority employees. In a number of cases involving African-American and Hispanic employees, courts have held that Texas employers engaged in impermissible intentional race discrimination. For example, in *Rendon v. AT&T Technologies*,[200] a class action suit filed by African-American and Hispanic telephone installers, the Court found that AT&T intentionally discriminated against class plaintiffs in violation of Title VII. The Court held that AT&T's subjective job assignment and performance appraisal system discriminated against minority installers in two ways. First, white installers were assigned to perform higher level work

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[198] The term "constructive discharge" refers to a situation where the employer, while not actually terminating the plaintiff's employment, makes the terms and conditions of employment so unbearable that the law deems the employee discharged.

[199] 661 F.2d 369 (5th Cir. 1981).

[200] 883 F.2d 388 (5th Cir. 1989).

approximately twice as often as class members.[201] Second, class members received poorer performance ratings than did whites. The court determined that the combination of these two factors resulted in class members receiving far fewer opportunities for advancement than their white counterparts. The Court also was persuaded by anecdotal evidence of discriminatory conduct. Class plaintiffs were repeatedly subjected to racial slurs. One Hispanic class member testified that white installers referred to him as "Wetback . . . You Mexican."[202]

Similarly, in *Hernandez v. Hill County Telephone Cooperative, Inc.*,[203] the court affirmed a finding that a telephone cooperative violated Title VII by discriminating against a Hispanic employee. Specifically, the court held that the company discriminated against the Hispanic employee by (1) failing to hire him for an available position for which he was qualified; (2) failing to provide the same on-the-job training received by similarly situated whites; and (3) failing to grant him pay raises at six-month intervals as was done for all other employees.[204]

The reported instances of employment discrimination are not limited to the private sector. Many cases in which a finding of employment discrimination has been made have involved State agencies that work directly with private contractors. For example, in *Welch v. University of Texas*,[205] a court determined that the plaintiff was forced to quit because of her sex. The plaintiff was employed as a research assistant at the University's Marine Science Institute. While she was employed, she pursued a doctoral degree in education. Her supervisor informed her that after she

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[201] *Id.* at 393.

[202] *Id.* at 395.

[203] 849 F.2d 139 (5th Cir. 1988).

[204] *Id.* at 141.

[205] 659 F.2d 531 (5th Cir. 1981).

received her degree, she would have to quit because "he did not want a woman doctor in his employ." After the plaintiff received her degree, her supervisor approached her, told her she was overqualified for her job, and demanded to know when she was leaving. She subsequently resigned and brought a Title VII suit against the University. The Court determined that the University discriminated against plaintiff because of her sex and awarded plaintiff back pay and attorneys' fees.

In another case of sex discrimination, a court held that the Texas Department of Criminal Justice sexually harassed one of its female parole officers.[206] Similarly, in a case involving the Texas Department of Corrections, the Court found that the agency discriminated against the plaintiff because of her sex when it demoted her.[207] The Court found that plaintiff not only had established that she suffered from discrimination, but that she also had proven that the agency engaged in statewide discrimination against all female employees.

G. Business Discrimination

There is journalistic evidence that discrimination against minorities and women as individuals extends to minorities and women as business owners. A number of newspaper articles have reported that HUBs in Texas face substantial obstacles to doing business with public and private entities.[208] One commonly reported obstacle is difficulty obtaining bonding. According to Frank Cortez, the director of the Dallas Hispanic Chamber of Commerce, "[t]he biggest problem for many minority-owned businesses is getting bonding, especially for construction companies. The money is just not

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[206] *Cuesta v. Texas Department of Criminal Justice*, 805 F. Supp. 451 (W.D. Tex. 1991).

[207] *Sebastian v. Texas Department of Corrections*, 544 F. Supp. 970 (S.D. Tex. 1982).

[208] Travis E. Poling, "Minority Contract Numbers Little Changed From Last Year," *San Antonio Business Journal*, November 13, 1992; Sanford Nowlin, "City Lags Austin, Dallas, Houston In Women's Ownership of Business." *San Antonio Business Journal*, July 3, 1992; Kim M. Aho, "Finding Success; Breaking Barriers," *Austin Business Journal*, June 15, 1992; Tracy Staton, "Minority Businesses Still Feel Shut Out," *Dallas Business Journal*, May 3, 1991.

out there."[209] A related problem is obtaining financing, where minority and white women alike face difficulties in dealing with men. One female business owner described how financial institutions prefer to lend to men: "In the beginning, I was told that I could not get a loan because I was woman-owned. The only way I could get a loan was to have my husband guarantee it."[210]

Overcoming the "good old boy" network is another commonly cited obstacle facing HUBs, and one which is not easy to overcome. Many HUB owners feel disadvantaged by the practice of white businessmen doing everyday business among themselves.[211] According to the founder of a manufacturing firm in Dallas, the number one problem facing HUBs "is that most of the buyers are good ol' boys who have been doing business for a long time with family members, close church associates or whatever the case might be, but they are very uncomfortable doing business with minorities, especially when the only minority images you really see are negative ones on the news at night."[212] Other obstacles reported by HUB owners and representatives include burdensome paperwork requirements and societal biases against women and minorities.[213]

In the next two sections we investigate these complaints more systematically through responses to surveys and personal interviews we have conducted.

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[209] Philip Chalk, "Breaking Down Barriers: Minority and Female-Owned Businesses Wade Through Red Tape and Established Networks," *Dallas Business Journal*, August 27, 1993.

[210] *Id.*

[211] *Id.*

[212] *Id.*

[213] See generally, materials cited supra in note 208.

III. Evidence From HUB and Non-HUB Surveys

We surveyed both HUBs and non-HUBs to find out their perceptions of discrimination and of the difficulties involved in contracting with the State.

A. The HUB Survey

We sent questionnaires to 30,139 firms currently listed in HUB directories maintained by various agencies and organizations in Texas.[214] We received responses from 4,763 firms (15.3 percent of the total).[215, 216] The HUB mail survey was sent to all identifiable HUBs in Texas to determine the extent to which HUBs may experience discrimination due to their race or sex.[217] The questionnaire requested a variety of information on the firm, asked firms if they had experienced an instance of discrimination in the past five years, and asked the type of business dealing in which they had experienced discrimination. To account for different types of business dealings across industries, we sent slightly different questionnaires to firms that were listed as construction, commodity or professional and other services firms. Tables 6.1 and 6.2 report the race, sex and industry breakdown of the individuals who responded to the survey by number and by percent, respectively.

As shown in Table 6.3, overall, 22.8 percent of the survey respondents who answered the discrimination question indicated that they had experienced at least one instance of discrimination

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[214] We sent surveys to all of the firms we identified from the directories described in Appendix D. NERA's original mailing list consisted of 4,793 construction firms, 10,321 professional and other services firms and 15,025 commodity purchasing firms.

[215] Among the 4,763 responses, 540 were construction firms, 1,862 were commodity firms and 2,361 were professional and other services firms.

[216] This percent understates the true response rate because 3,192 surveys were sent to concerns that were no longer in business or who had changed addresses. Further, 184 surveys were returned after the cut-off period, so while they were responsive, they are not included in the results.

[217] The questionnaires are reproduced in Appendix G.

TABLE 6.1

NUMBER OF HUB SURVEY RESPONDENTS
BY RACE, SEX AND PROCUREMENT CATEGORY

Race Group	Construction			Commodities			Professional and Other Services			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total	Male	Female	Total
African American	80	14	94	183	71	254	275	156	431	538	241	779
Hispanic	171	33	204	377	131	508	512	234	746	1060	398	1458
Asian	10	8	18	84	45	129	107	41	148	201	94	295
Native American	21	8	29	27	20	47	32	43	75	80	71	151
Total Minorities[1]	289	70	359	689	287	976	937	488	1425	1915	845	2760
White Women	-	181	181	-	886	886	-	936	936	-	2003	2003
Total HUBs	289	251	540	689	1173	1862	937	1424	2361	1915	2848	4763

Note: [1] Total minorities figure includes minority respondents who answered that they were a minority-owned firm but did not indicate their specific race group.

Source: Based on NERA's HUB mail survey conducted in May 1994.

TABLE 6.2

DISTRIBUTION OF RESPONDENTS TO HUB MAIL SURVEY
BY RACE, SEX AND PROCUREMENT CATEGORY

Race Group	Construction			Commodities			Professional and Other Services		
	Male	Female	Total[1]	Male	Female	Total[1]	Male	Female	Total[1]
African American	14.8 %	2.6 %	17.4 %	9.8 %	3.8 %	13.6 %	11.6 %	6.6 %	18.3 %
Hispanic	31.7	6.1	37.8	20.2	7.0	27.3	21.7	9.9	31.6
Asian	1.9	1.5	3.3	4.5	2.4	6.9	4.5	1.7	6.3
Native American	3.9	1.5	5.4	1.5	1.1	2.5	1.4	1.8	3.2
Total Minorities[2]	53.5	13.0	66.5	37.0	15.4	52.4	39.7	20.7	60.4
White Women	-	33.5	33.5	-	47.6	47.6	-	39.6	39.6
Total HUBs	53.5	46.5	100.0	37.0	63.0	100.0	39.7	60.3	100.0

Note: [1] Figures may not sum to totals due to rounding.
[2] Total minorities figure includes minority respondents who answered that they were a minority-owned firm but did not indicate their specific race group.
Source: Based on NERA's HUB mail survey conducted in May 1994.

TABLE 6.3

PERCENT OF MAIL SURVEY RESPONDENTS WHO REPORTED AT LEAST ONE INSTANCE OF DISCRIMINATION IN THE LAST FIVE YEARS

(Number of Responses in Parentheses)

Race/Sex Group	Construction	Commodities	Professional and Other Services	Total
African American	48.4 % (91)	44.8 % (239)	41.7 % (408)	43.5 % (738)
Hispanic	35.2 (199)	19.6 (490)	24.1 (705)	24.1 (1394)
Asian	38.9 (18)	16.5 (121)	26.1 (134)	22.7 (273)
Native American	27.6 (29)	24.4 (45)	19.1 (68)	22.5 (142)
Total Minorities[1]	38.5 (351)	26.0 (931)	29.7 (1338)	29.6 (2620)
White Women	19.1 (178)	9.7 (858)	16.3 (895)	13.6 (1931)
Total HUBs	31.9 (529)	18.2 (1789)	24.4 (2233)	22.8 (4551)

Note: [1] Total minorities figure includes minority respondents who answered that they were a minority-owned firm but did not indicate their specific race group.

Source: Based on NERA's HUB mail survey conducted in May 1994.

within the past five years in one or more of the different areas of business dealings identified on the surveys.[218,219] African Americans reported the highest rate of discrimination, with 43.5 percent indicating that they had encountered discrimination. Hispanics reported the next highest rate of discrimination (24.1 percent), Asians (22.7 percent), Native Americans (22.5 percent) and white women (13.6 percent). The incidence of discrimination varied slightly across the three major procurement areas, with construction firm respondents reporting the most frequent occurrences of discrimination: 31.9 percent of construction firm respondents, 24.4 percent of professional and other services firm respondents and 18.2 percent of commodity firm respondents reported that they had experienced discrimination.

HUBs claim to experience discrimination in obtaining commercial credit fairly often. Table 6.4 shows that 15.6 percent of respondents experienced discrimination in obtaining commercial credit in the past five years. African American-owned firms reported the highest incidence (34.5 percent) of discrimination in obtaining commercial credit; white woman-owned firms reported the least incidence (7.5 percent) of discrimination in commercial lending practices. HUBs in the construction industry reported the highest incidence of this form of discrimination: 29.8 percent of the minority-owned businesses reported discriminatory experiences in commercial lending; 10.4 percent of white woman-owned firms reported similar discriminatory experiences.

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[218] We report our analysis for those respondents who provided valid responses (i.e., yes or no) to the questions asked. For simplicity, we will refer to the firms that provided valid responses to questions as the respondents.

[219] In a study for the City of New York, we conducted telephone surveys of 51 non-respondents to determine whether they had different views on discrimination than respondents. We found that the percent of telephone respondents who reported discrimination was virtually the same as the percent of mail survey respondents who reported discrimination, and the difference was neither substantively nor statistically significant. See David S. Evans, "The Utilization of Minority and Woman-Owned Businesses by the City of New York," 1992. There is no reason to believe that this survey would yield a different result.

TABLE 6.4

PERCENT OF RESPONDENTS WHO REPORTED AT LEAST ONE INSTANCE OF DISCRIMINATION IN OBTAINING COMMERCIAL CREDIT IN THE LAST FIVE YEARS

(Number of Responses in Parentheses)

Race/Sex Group	Construction	Commodities	Professional and Other Services	Total
African American	40.7 % (86)	35.5 % (220)	32.6 % (386)	34.5 % (692)
Hispanic	27.7 (188)	13.6 (471)	17.0 (676)	17.3 (1335)
Asian	25.0 (16)	10.3 (116)	14.7 (129)	13.4 (261)
Native American	17.9 (28)	18.2 (44)	13.4 (67)	15.8 (139)
Total Minorities[1]	29.8 (332)	18.9 (885)	21.5 (1278)	21.7 (2495)
White Women	10.4 (173)	5.3 (836)	9.0 (864)	7.5 (1873)
Total HUBs	23.2 (505)	12.3 (1721)	16.5 (2142)	15.6 (4368)

Note [1] Total minorities figure includes minority respondents who answered that they were a minority-owned firm but did not indicate their specific race group.

Source Based on NERA's HUB mail survey conducted in May 1994.

1. Construction Survey

We received responses from a total of 540 HUB construction firms; 529 of these firms responded to the discrimination question. Table 6.3 shows that 31.9 percent of the construction respondents indicated that they had experienced at least one instance of discrimination in the past five years. The highest rate of discrimination in the construction industry was reported by African Americans (48.4 percent), followed by Asians (38.9 percent), Hispanics (35.2 percent), Native Americans (27.6 percent) and white women (19.1 percent). Table 6.5 presents the results of the construction firm respondents who indicated they had experienced discrimination by type of business dealing. About 30 percent of the minority-owned firms who experienced discrimination asserted disparate treatment in applying for commercial loans, and about 21 percent in applying for a bond and obtaining quotes from suppliers and 20 percent in bidding on State prime contracts and subcontracts. The most problematic area for white woman-owned businesses was in applying for commercial loans where 10.4 percent reported experiencing discriminatory practices.

In our surveys, we also asked questions about bid requirements in the construction industry to determine which requirements were perceived as serious impediments to the bidding process. Table 6.6 shows that cost of completing bids, length of notification of bid deadlines, the ability (or lack thereof) to obtain working capital, large project size and bonding requirements are the most serious bid impediments for HUBs. Of the respondents to the questions, 65.6 percent of minority-owned firms and 65.8 percent of white woman-owned firms indicated that cost of completing bids made it harder or impossible to obtain an award; 59.0 percent of minorities and 35.9 percent of white women reported problems with obtaining working capital; 58.9 percent of minorities and 66.0 percent of white women reported length of notification for bid deadlines to be serious bid impediments; 48.7 percent of minority-owned firms and 47.7 percent of woman-owned firms reported large project size

TABLE 6.5

CONSTRUCTION FIRM RESPONDENTS WHO INDICATED THAT THEY HAD EXPERIENCED AT LEAST ONE INSTANCE OF DISCRIMINATION IN BUSINESS DEALING

(Number of Responses in Parentheses)

Business Dealing	African American	Hispanic	Asian	Native American	Total Minorities[1]	White Women	Total HUBs
Applying for commercial loans	40.7 % (86)	27.7 % (188)	25.0 % (16)	17.9 % (28)	29.8 % (332)	10.4 % (173)	23.2 % (505)
Applying for a bond	30.6 (85)	19.3 (187)	18.8 (16)	10.7 (28)	20.9 (330)	7.0 (172)	16.1 (502)
Obtaining quotes from suppliers	30.5 (82)	18.7 (187)	12.5 (16)	14.3 (28)	20.8 (327)	6.9 (174)	16.0 (501)
Bidding or working on State, prime contracts	27.4 (84)	16.1 (186)	29.4 (17)	17.9 (28)	20.4 (329)	6.4 (171)	15.6 (500)
Bidding or working on State subcontracts	26.2 (84)	17.2 (186)	29.4 (17)	24.1 (29)	20.4 (329)	8.2 (171)	16.2 (500)
Receiving payment for prime contracts	16.7 (84)	11.9 (185)	18.8 (16)	10.7 (28)	13.1 (327)	2.9 (173)	9.6 (500)
Receiving payment for subcontracts	17.9 (84)	17.2 (186)	13.3 (15)	3.6 (28)	15.9 (327)	6.9 (173)	12.8 (500)

Note: [1] Total minorities figure includes minority respondents who answered that they were a minority-owned firm but did not indicate their specific race group.

Source: Based on NERA's HUBS mail survey conducted in May 1994. See construction survey question 3 in Appendix G.

TABLE 6.6

CONSTRUCTION FIRM RESPONDENTS WHO INDICATED THAT
BID REQUIREMENTS MADE IT HARDER OR IMPOSSIBLE TO OBTAIN AN AWARD

(Number of Responses in Parentheses)

Bid Requirement	African American	Hispanic	Asian	Native American	Total Minorities[1]	White Women	Total HUBs
Bonding Requirements	52.5 % (59)	53.8 % (130)	70.0 % (10)	63.6 % (22)	54.1 % (233)	34.4 % (131)	47.0 % (364)
Insurance Requirements	39.7 (58)	42.0 (131)	30.0 (10)	50.0 (22)	41.6 (233)	25.2 (131)	35.7 (364)
Large Project Size	45.6 (57)	50.4 (129)	77.8 (9)	40.9 (22)	48.7 (228)	47.7 (128)	48.3 (356)
Cost of Completing Bids	70.8 (24)	71.4 (49)	33.3 (6)	62.5 (8)	65.6 (93)	65.8 (38)	65.6 (131)
Obtaining Working Capital	70.0 (60)	55.6 (135)	80.0 (10)	45.5 (22)	59.0 (239)	35.9 (128)	51.0 (367)
Length of Notification for Bid Deadlines	65.5 (29)	60.0 (50)	0.0 (5)	83.3 (6)	58.9 (95)	66.0 (47)	61.3 (142)
Prequalification Requirements (e.g. experience)	42.1 (57)	38.2 (131)	50.0 (10)	45.5 (22)	38.8 (232)	21.9 (128)	32.8 (360)
Previous Dealings with the State	25.0 (56)	16.0 (131)	10.0 (10)	18.2 (22)	18.7 (230)	10.2 (128)	15.6 (358)

Note: [1] Total minorities figure includes minority respondents who answered that they were a minority-owned firm but did not indicate their specific race group.

Source: Based on NERA's HUB mail survey conducted in May 1994. See construction survey question 3 in Appendix G.

as a problem; and 54.1 percent of minority-owned firms and 34.4 percent of white woman-owned firms indicated that bonding requirements were also major obstacles.

2. Professional and Other Services Survey

We received 2,361 responses to our survey of professional and other services firms. Table 6.3 shows that 2,233 responded to the discrimination question and 24.4 percent of the respondents stated that they had been discriminated against. African Americans reported the highest rate (41.7 percent), followed by Asians (26.1 percent), Hispanics (24.1 percent), Native Americans (19.1 percent) and white women (16.3 percent). Table 6.7 presents the results from the professional and other services firm respondents who indicated they had experienced discrimination (by type of business dealing). Of the business dealings listed, discriminatory treatment was reported most frequently in applying for commercial loans, dealing with professional associations and bidding or working on State prime contracts: 21.5 percent of minority-owned firms and 9.0 percent of white woman-owned firm reported difficulty in applying for commercial loans.

Table 6.8 summarizes the survey responses concerning bid requirements that made awards difficult to obtain for professional and other service firms. In general, between 22 percent and 61 percent of the minority respondents and between 11 percent and 62 percent of the white women respondents, indicated that each of the bid requirements listed made it harder or impossible to obtain an award. Cost of completing proposals and length of notification for proposal deadlines were perceived as the most serious bid impediments by both minority and white woman-owned firms.

3. Commodity Purchasing Survey

A total of 1,862 firms responded to our commodity purchasing survey. As shown in Table 6.3, 1,789 firms responded to the discrimination question and 18.2 percent of the respondents reported at least one instance of discrimination. African Americans reporting the highest incidence