

STATE OF DELAWARE



EXECUTIVE DEPARTMENT

DOVER

EXECUTIVE ORDER
NUMBER SEVENTY-EIGHT

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES,
AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE
STATE OF DELAWARE.

RE: ESTABLISHING TEMPORARY GOALS FOR STATE AGENCIES IN AWARDING
PUBLIC WORKS CONTRACTS AND MAKING CHANGES TO THE
MEMBERSHIP OF THE BUILDING AND TRADE COUNCIL.

WHEREAS, the State is committed to maximizing the participation of minority and women-owned businesses in public works projects and other areas of procurement, in accordance with applicable federal and state law;

WHEREAS, under current state law, state funded public works projects undertaken by Delaware State agencies may only be awarded on the basis of price and schedule;

WHEREAS, the United States Supreme Court, in City of Richmond v. J.A. Croson Co. (1989), held that state and local governments may only implement targeted minority business enterprise (MBE) programs if they demonstrate a "compelling governmental interest" justifying the program and the program is otherwise "narrowly tailored" to remedy any disparity identified;

WHEREAS, to demonstrate a "compelling government interest," a study empirically establishing the existence, extent and possible causes of disparity in the awarding of public works contracts must be conducted;

WHEREAS, the State has not as yet undertaken such an in-depth, quantitative disparity study, but intends to do so in the near future;

WHEREAS, the study should, to the extent disparity is established, identify appropriate remedies to address the disparity;

WHEREAS, in the absence of such a study, it appears that minority and women-owned businesses may be underrepresented on several major public works contracts that have been let by the State of Delaware; and,

WHEREAS, the State has a responsibility to determine if discrimination exists in public works contracting and to ameliorate the effects of any discrimination identified.

NOW, THEREFORE, I, Thomas R. Carper, by the authority vested in me as Governor of the State of Delaware, do hereby order as follows:

1. The following interim goals are set for participation by minority and female individuals, and minority and women-owned firms in State public works projects, pending the outcome and recommendations of a disparity study:

A. Workforce Goal:

- (i) The percentage of women and racial minorities employed by construction firms working on state agency public works projects should approximate the percentage that exists in the appropriate labor market.
- (ii) In determining whether this goal has been achieved, the aggregate of all construction related employment for the calendar year should be examined.

B. Contractor/Sub-Contractor Participation Goal:

- (i) Documented, good faith efforts should be made to encourage prime contractors on State agency public works projects to employ Minority or Disadvantaged Owned Businesses (M/DBE) as subcontractors to meet or exceed the goals established by this order.
 - (ii) The goal of participation by M/DBEs as sub-contractors during the calendar year should be no less than 10 percent over the average percentage participating during the previous five (5) calendar years on such projects.
2. Additionally, documented, good faith efforts should be made to maximize the number of M/DBEs that provide goods and services, professional services or non-professional services with an understanding of state procurement practices and information on how to provide goods and services to state agencies.
 3. Each state agency shall submit to the Governor's Building and Trades Council, no later than January 31, 2001, a report documenting efforts to meet the goals set forth in this order during calendar year 2000.
 4. The goals set forth in this order are temporary in nature. Any disparity study commissioned by the State of Delaware should address the issue of whether the factual predicate establishes the need for any ongoing remedies, and if so, whether the interim goals as

established by this Executive Order should be suspended, extended, modified and/or augmented with other kinds of remedies, such as amending current State law to allow for the establishment of a State M/DBE program.

5. While the primary focus of the interim goals set forth in this Order is public works contracting, it is understood and acknowledged that the viability of establishing similar goals for other areas of procurement should be examined in the future.
6. Amend Executive Order 71 by striking the text of paragraph 2 and inserting in lieu thereof the following language:

“2. The Council shall be composed of the following:

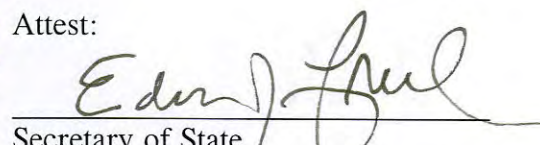
- (i) A Chairperson, to be selected by the Governor;
- (ii) Director of the Delaware Economic Development Office;
- (iii) Secretary of the Department of Labor;
- (iv) Secretary of the Department of Administrative Services;
- (v) Secretary of the Department of Transportation;
- (vi) A representative of the Office of the Mayor of the City of Wilmington;
- (vii) A representative of the Latin American Community Center;
- (viii) A representative of the Delaware Commission for Women;
- (ix) A representative of the state branch of the National Association for the Advancement of Colored People (NAACP);
- (x) A representative of the Metropolitan Wilmington Urban League;
- (xi) A representative of the Interdenominational Ministers Action Council of Delaware, Inc.;
- (xii) A representative of the Delaware Contractors' Association;
- (xiii) A representative of the Association of Builders and Contractors;
- (xiv) A representative of the Delaware Building and Trade Association;
- (xv) A representative of the Delaware Construction Council;
- (xvi) A representative of the Micro Business Chamber of Commerce;
- (xvii) A representative of the Minority Business Association; and
- (xviii) One At-Large member to be selected by the Governor.”

7. The provisions of this Order shall be effective immediately.

Approved this 17th day of March, 2000.


Governor

Attest:


Secretary of State

