



Sen. Toi W. Hutchinson

Filed: 4/8/2011

09700SB1923sam002

LRB097 07401 HEP 54136 a

1 AMENDMENT TO SENATE BILL 1923

2 AMENDMENT NO. _____. Amend Senate Bill 1923 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Department of Transportation Law of the
5 Civil Administrative Code of Illinois is amended by changing
6 Section 2705-600 as follows:

7 (20 ILCS 2705/2705-600)

8 Sec. 2705-600. Target market program. In order to remedy
9 particular incidents and patterns of egregious race or gender
10 discrimination, the chief procurement officer, in consultation
11 with the Department, shall have the power to implement a target
12 market program incorporating the following terms: ~~achieve all~~
13 ~~diversity goals, the Department's chief procurement officer~~
14 ~~shall develop and coordinate a target market program including~~
15 ~~the following elements:~~

16 (0.5) Each fiscal year, the Department shall review any

1 and all evidence of discrimination related to
2 transportation construction projects. Evidence of
3 discrimination may include, but is not limited to: (i) the
4 determination of the Department's utilization of
5 minority-owned and female-owned firms in its prime
6 contracts and associated subcontracts; (ii) the
7 availability of minority-owned and female-owned firms in
8 the Department's geographic market areas and specific
9 construction industry markets; (iii) any disparities
10 between the utilization of minority-owned and female-owned
11 firms in the Department's markets and the utilization of
12 those firms on the Department's prime contracts and
13 subcontracts in those markets; (iv) any disparities
14 between the utilization of minority-owned and female-owned
15 firms in the overall construction markets in which the
16 Department purchases and the utilization of those firms in
17 the overall construction economy in which the Department
18 operates; (v) evidence of discrimination in the rates at
19 which minority-owned and female-owned firms in the
20 Department's markets form businesses compared to similar
21 non-minority-owned and non-female-owned firms in the
22 Department's markets and in the dollars earned by such
23 businesses; and (vi) quantitative and qualitative
24 anecdotal evidence of discrimination. If after reviewing
25 such evidence, the Department finds and the chief
26 procurement officer concurs in the findings that the

1 Department has a strong basis in evidence that it has a
2 compelling interest in remedying the identified
3 discrimination against a specific group, race, or gender,
4 and that the only remedy for such discrimination is a
5 narrowly tailored target market, the chief procurement
6 officer, in consultation with the Department, has the power
7 to establish and implement a target market program tailored
8 to address the specific findings of egregious
9 discrimination made by the Department, after a public
10 hearing at which minority, female, and general contractor
11 groups, community organizations, and other interested
12 parties shall have the opportunity to provide comments.

13 (1) In January of each year, the Department and the
14 chief procurement officer shall report jointly to the
15 General Assembly the results of any evidentiary inquiries
16 or studies that establish the Department's compelling
17 interest in remedying egregious discrimination based upon
18 strong evidence of the need for a narrowly tailored target
19 market to remedy such discrimination and public hearings
20 held pursuant to this Section, and shall report the actions
21 to be taken to address the findings, including, if
22 warranted, the establishment and implementation of any
23 target market initiatives. ~~estimate the dollar value of all~~
24 ~~contracts to be awarded by the Department during that year~~
25 ~~and shall multiply that total by the minority owned~~
26 ~~business target market percentage and the women owned~~

1 ~~business target market percentage for that year. Contracts~~
2 ~~with an estimated dollar value equal to those products~~
3 ~~shall be set aside (prior to advertisement in the case of~~
4 ~~contracts to be awarded by bid) to be let only to qualified~~
5 ~~minority owned businesses and qualified women owned~~
6 ~~businesses, respectively.~~

7 (2) The chief procurement officer shall work with the
8 officers and divisions of the Department to determine the
9 appropriate designation of contracts as target market
10 contracts. The ~~To the extent practical,~~ the chief
11 procurement officer, in consultation with the Department,
12 shall determine appropriate contract formation and bidding
13 procedures for target market contracts, including, but not
14 limited to, the dividing of ~~divide the~~ procurements so
15 designated into contract award units ~~of economically~~
16 ~~feasible production runs~~ in order to facilitate offers or
17 bids from minority-owned businesses and female-owned
18 ~~women owned~~ businesses and the removal of bid bond
19 requirements for minority-owned businesses and
20 female-owned businesses. ~~In making the annual designation~~
21 ~~of target market contracts, the chief procurement officer~~
22 ~~shall attempt to vary the included procurements so that a~~
23 ~~variety of goods and services produced by different~~
24 ~~minority owned businesses and women owned businesses shall~~
25 ~~be set aside each year.~~ Minority-owned businesses and
26 female-owned ~~women owned~~ businesses shall remain eligible

1 to seek the procurement award of contracts that have not
2 been designated as target market contracts.

3 (3) ~~The Department shall develop a list of~~
4 ~~minority-owned businesses and women-owned businesses that~~
5 ~~are interested in participating in the target market~~
6 ~~program, including the type of contract in which each~~
7 ~~minority-owned businesses and women-owned businesses is~~
8 ~~interested in participating.~~ The chief procurement officer
9 ~~Department~~ may make participation in the target market
10 program dependent upon submission to stricter compliance
11 audits than are generally applicable. No contract shall be
12 eligible for inclusion in the target market program unless
13 ~~the list developed by the Department~~ determines ~~indicates~~
14 that there are at least 3 ~~qualified~~ minority-owned
15 businesses or female-owned ~~women-owned~~ businesses
16 interested in participating in that type of contract. The
17 Department, with the concurrence of the chief procurement
18 officer, may develop guidelines to regulate the level of
19 participation of individual minority-owned businesses and
20 female-owned ~~women-owned~~ businesses in the target market
21 program in order to prevent the domination of the target
22 market program by a small number of those entities. The ~~If~~
23 ~~necessary or useful,~~ the Department may require
24 minority-owned businesses and female-owned ~~women-owned~~
25 businesses to participate in training programs offered by
26 the Department or other State agencies as a condition

1 precedent to participation in the target market program.

2 (4) Participation in the target market program shall be
3 limited to minority-owned businesses and female-owned
4 ~~women-owned~~ businesses and joint ventures consisting
5 exclusively of minority-owned businesses, female-owned
6 ~~women-owned~~ businesses, or both, that are certified as
7 disadvantaged businesses pursuant to the provisions of
8 Section 6(d) of the Business Enterprise for Minorities,
9 Females, and Persons with Disabilities Act. A firm awarded
10 ~~The prime contractor on~~ a target market contract may
11 subcontract up to 50% of the dollar value of the target
12 market contract to subcontractors who are not
13 minority-owned businesses or female-owned ~~women-owned~~
14 businesses.

15 (5) The Department may include in the target market
16 program contracts that are funded by the federal government
17 to the extent allowed by federal law and may vary the
18 standards of eligibility of the target market program ~~(for~~
19 ~~example, by allowing the participation of businesses owned~~
20 ~~by a person with a disability)~~ to the extent necessary to
21 comply with the federal funding requirements.

22 (6) If no satisfactory bid or response is received with
23 respect to a contract that has been designated as part of
24 the target market program, the chief procurement officer,
25 in consultation with the Department, ~~Department~~ may delete
26 that contract from the target market program. In addition,

1 the chief procurement officer, in consultation with the
2 Department, may ~~shall~~ thereupon designate and set aside for
3 the target market program additional contracts
4 corresponding in approximate value to the contract that was
5 deleted from the target market program, in keeping with the
6 narrowly tailored process used for selecting contracts
7 suitable for the program and to the extent feasible.

8 (7) The chief procurement officer, in consultation
9 with the Department, shall promulgate such rules as he or
10 she deems necessary to administer the target market
11 program. ~~In order to facilitate the performance of target~~
12 ~~market contracts by minority-owned businesses and~~
13 ~~women-owned businesses, the chief procurement officer may~~
14 ~~expedite payments under target market contracts, may~~
15 ~~reduce retainages under target market contracts when~~
16 ~~appropriate, and may pay the contractor a portion of the~~
17 ~~value of a target market contract at the time of award as~~
18 ~~an advance to cover start-up and mobilization costs.~~

19 If any part, sentence, or clause of this Section is for any
20 reason held invalid or to be unconstitutional, such decision
21 shall not affect the validity of the remaining portions of this
22 Section.

23 This Section is repealed on June 30, 2014.

24 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793
25 for the effective date of P.A. 96-795).)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".