

AN ACT concerning State government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

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

(20 ILCS 2705/2705-600)

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

(0.5) Each fiscal year, the Department shall review any and all evidence of discrimination related to transportation construction projects. Evidence of discrimination may include, but is not limited to: (i) the determination of the Department's utilization of minority-owned and female-owned firms in its prime contracts and associated subcontracts; (ii) the availability of minority-owned and female-owned firms in

the Department's geographic market areas and specific construction industry markets; (iii) any disparities between the utilization of minority-owned and female-owned firms in the Department's markets and the utilization of those firms on the Department's prime contracts and subcontracts in those markets; (iv) any disparities between the utilization of minority-owned and female-owned firms in the overall construction markets in which the Department purchases and the utilization of those firms in the overall construction economy in which the Department operates; (v) evidence of discrimination in the rates at which minority-owned and female-owned firms in the Department's markets form businesses compared to similar non-minority-owned and non-female-owned firms in the Department's markets and in the dollars earned by such businesses; and (vi) quantitative and qualitative anecdotal evidence of discrimination. If after reviewing such evidence, the Department finds and the chief procurement officer concurs in the findings that the Department has a strong basis in evidence that it has a compelling interest in remedying the identified discrimination against a specific group, race, or gender, and that the only remedy for such discrimination is a narrowly tailored target market, the chief procurement officer, in consultation with the Department, has the power to establish and implement a target market program tailored

to address the specific findings of egregious discrimination made by the Department, after a public hearing at which minority, female, and general contractor groups, community organizations, and other interested parties shall have the opportunity to provide comments.

(1) In January of each year, the Department and the chief procurement officer shall report jointly to the General Assembly the results of any evidentiary inquiries or studies that establish the Department's compelling interest in remedying egregious discrimination based upon strong evidence of the need for a narrowly tailored target market to remedy such discrimination and public hearings held pursuant to this Section, and shall report the actions to be taken to address the findings, including, if warranted, the establishment and implementation of any target market initiatives. ~~estimate the dollar value of all contracts to be awarded by the Department during that year and shall multiply that total by the minority owned business target market percentage and the women owned business target market percentage for that year. Contracts with an estimated dollar value equal to those products shall be set aside (prior to advertisement in the case of contracts to be awarded by bid) to be let only to qualified minority owned businesses and qualified women owned businesses, respectively.~~

(2) The chief procurement officer shall work with the

officers and divisions of the Department to determine the appropriate designation of contracts as target market contracts. ~~The~~ To the extent practical, the chief procurement officer, in consultation with the Department, shall determine appropriate contract formation and bidding procedures for target market contracts, including, but not limited to, the dividing of ~~divide the~~ procurements so designated into contract award units ~~of economically feasible production runs~~ in order to facilitate offers or bids from minority-owned businesses and female-owned ~~women-owned~~ businesses and the removal of bid bond requirements for minority-owned businesses and female-owned businesses. ~~In making the annual designation of target market contracts, the chief procurement officer shall attempt to vary the included procurements so that a variety of goods and services produced by different minority owned businesses and women owned businesses shall be set aside each year.~~ Minority-owned businesses and female-owned ~~women-owned~~ businesses shall remain eligible to seek the procurement award of contracts that have not been designated as target market contracts.

(3) ~~The Department shall develop a list of minority-owned businesses and women-owned businesses that are interested in participating in the target market program, including the type of contract in which each minority owned businesses and women owned businesses is~~

~~interested in participating.~~ The chief procurement officer ~~Department~~ may make participation in the target market program dependent upon submission to stricter compliance audits than are generally applicable. No contract shall be eligible for inclusion in the target market program unless ~~the list developed by~~ the Department determines ~~indicates~~ that there are at least 3 ~~qualified~~ minority-owned businesses or female-owned ~~women-owned~~ businesses interested in participating in that type of contract. The Department, with the concurrence of the chief procurement officer, may develop guidelines to regulate the level of participation of individual minority-owned businesses and female-owned ~~women-owned~~ businesses in the target market program in order to prevent the domination of the target market program by a small number of those entities. The ~~If necessary or useful,~~ the Department may require minority-owned businesses and female-owned ~~women-owned~~ businesses to participate in training programs offered by the Department or other State agencies as a condition precedent to participation in the target market program.

(4) Participation in the target market program shall be limited to minority-owned businesses and female-owned ~~women-owned~~ businesses and joint ventures consisting exclusively of minority-owned businesses, female-owned ~~women-owned~~ businesses, or both, that are certified as disadvantaged businesses pursuant to the provisions of

Section 6(d) of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act. A firm awarded ~~The prime contractor on~~ a target market contract may subcontract up to 50% of the dollar value of the target market contract to subcontractors who are not minority-owned businesses or female-owned ~~women-owned~~ businesses.

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

(6) If no satisfactory bid or response is received with respect to a contract that has been designated as part of the target market program, the chief procurement officer, in consultation with the Department, ~~Department~~ may delete that contract from the target market program. In addition, the chief procurement officer, in consultation with the Department, ~~may shall~~ thereupon designate and set aside for the target market program additional contracts corresponding in approximate value to the contract that was deleted from the target market program, in keeping with the narrowly tailored process used for selecting contracts suitable for the program and to the extent feasible.

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

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

This Section is repealed on June 30, 2014.

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

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