

NOV 10 1998

EXECUTIVE ORDER  
98-21  
REBECCA MCDOWELL COOK  
SECRETARY OF STATE

WHEREAS, in 1990, the General Assembly passed and Governor Ashcroft signed Senate Bills 808 & 672 directing the Office of Administration to "establish and implement a plan to increase and maintain the participation of certified socially and economically disadvantaged small business concerns or minority business enterprises, directly or indirectly, in contracts for supplies, services, and construction contracts, consistent with goals determined after an appropriate study conducted to determine the availability of socially and economically disadvantaged small business concerns and minority business enterprises in the marketplace;" and

WHEREAS, the General Assembly appropriated funds for such a study for fiscal year 1994; and

WHEREAS, the study was conducted and found statistically significant disparities in state contractual expenditures for construction and the purchase of goods and services, as compared to the ready, willing, and able minority and woman-owned businesses in the state; and

WHEREAS, Senate Bills 808 & 672 also directed the Commissioner of Administration to appoint an Oversight Review Committee with members from the General Assembly, the business community, and selected departments of state government to review the results of the study; and

WHEREAS, such Oversight Review Committee was appointed and engaged in a thorough review of the study and delivered its report to the Governor; and

WHEREAS, the State of Missouri is dedicated to the compelling governmental interest of remedying race and sex based discrimination.

NOW, THEREFORE, I, Mel Carnahan, Governor of the State of Missouri, under the authority vested in me under the constitution and the laws of this state, to fulfill the mandate of the General Assembly in Senate Bills 808 & 672 and to pursue the compelling interest of remedying discrimination, do hereby declare the following narrowly tailored policies and procedures shall be adopted by the Executive Branch of state government in procuring all types of goods and services:

1. All state agencies shall continue to make every feasible effort to increase the percentage of goods and services procured from certified minority and women-owned businesses (MBEs and WBEs) to 10% and 5%, respectively. These efforts shall include participation in an Executive Branch Contract Compliance Council which is hereby established for the purpose of assisting agencies in implementing the policies and procedures recommended by the Oversight Review Committee pursuant to the State of Missouri disparity study.
2. The Divisions of Purchasing and Materials Management (DPMM) and Design and Construction (D&C) shall be authorized to implement the following programs to increase MBE and WBE procurement:
  - a. The DPMM shall be authorized to require prime contractors to subcontract with MBEs and WBEs on targeted contracts of \$100,000 or greater. Percentage goals shall be set for individual contracts by the DPMM in consultation with the Office of Contract Compliance (OCC) and user agency depending on the availability of MBE and WBE vendors in the applicable commodity/ service and geographic area, but the overall goal for all purchases for each fiscal year shall be set at 10% MBE and 5% WBE participation. In addition, DPMM shall set desirable goals of 20% MBE and 10% WBE participation. The participation requirement can be met through the use of prime contractors, subcontractors, suppliers, joint

ventures, or other arrangements that afford meaningful opportunities for MBE/WBE participation.

DPMM shall also appoint a MBE/WBE Purchasing Manager for the purpose of promoting and coordinating the participation of MBEs and WBEs in State of Missouri contracts.

- b. D&C shall be authorized to evaluate MBE/WBE participation in design contracts, as part of the quality-based selection process, for construction projects worth \$1.5 million or more. On contracts with lesser value, D&C shall make special efforts to target MBEs and WBEs as prime contractors. Overall participation goals for each fiscal year shall be 10% MBE and 5% WBE, with desired participation goals of 20% MBE and 10% WBE. The goal may be met through the use of prime contractors, subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for MBE/WBE participation.

D&C shall also be authorized to require prime contractors to subcontract with MBEs and WBEs on construction contracts. The goals shall be set on a project by project basis by D&C in consultation with the OCC, taking into account the availability of MBE and WBE contractors in the applicable geographic area and construction trade, with the overall participation goal for each fiscal year at 10% MBE and 5% WBE and desired participation goals of 15% MBE and 10% WBE. The goals may be met through the use of prime contractors, subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for MBE/WBE participation.

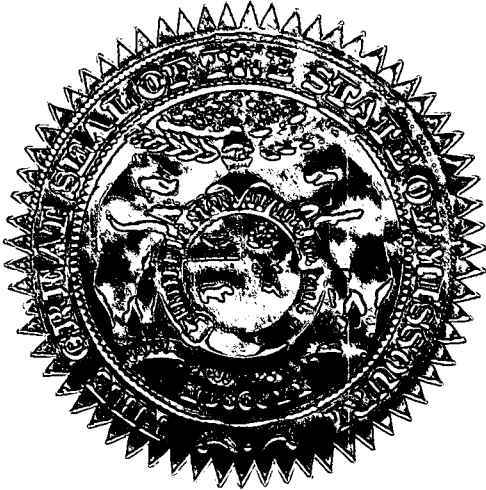
- c. Both D&C and the DPMM shall establish policies or rules to implement this program which shall include a waiver provision for prime contractors who make a good faith effort to attain such goals but do not succeed. They shall also establish enforcement procedures in cooperation with the OCC which shall include penalties for failure to meet subcontracting commitments. Their programs shall be reviewed annually to determine whether goals should be modified.
- d. D & C and DPMM are authorized and directed to identify and consult with such entities as the St. Louis Minority Business Council and the Kansas City Minority Supplier Council in identifying MBEs and WBEs to participate in state procurements.

- 3. An Office of Contract Compliance (OCC) shall be created and shall report to the Governor and the Commissioner of Administration and shall be assigned to the Office of Administration. The OCC shall have the following responsibilities and carry out the following tasks:

- a. cooperation with the DPMM and the D&C in the administration and enforcement of the MBE/WBE participation program;
- b. cooperation with the DPMM and the D&C in the development of policies, forms, and procedures to carry out the requirements of the MBE/WBE participation program;
- c. participation in MBE/WBE goal setting;
- d. fact-gathering and record-keeping to determine both the effectiveness of state participation programs and the availability and utilization of eligible MBEs and WBEs on individual projects, including levels of participation;

- e. availability in specified areas and assessment of the continuing need for MBE/WBE participation goals for specific contracting areas;
  - f. monitoring contractor compliance with MBE/WBE goals; and
  - g. recommending sanctions for contractors who fail to faithfully execute MBE/WBE participation plans during the course of contract performance.
4. This program shall be reviewed annually to monitor the level of MBE/WBE participation achieved in state contracting areas during the previous year. A written assessment of the program, and whether its continuation is necessary, shall annually be performed by the statutory Oversight Review Committee and delivered to the Governor and the General Assembly. After it is determined that MBEs and WBEs participate in state contracts in a manner commensurate with their presence and capability in the state marketplace, the program set forth in section 2 will be terminated.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 9<sup>th</sup> day of November, 1998.



*Earl C. Carraker*  
GOVERNOR

ATTEST:

*Rebecca M. Doell*  
SECRETARY OF STATE