

**State of New Jersey
Executive Order #34**

Governor Jon S. Corzine

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WHEREAS, New Jersey maintains a diverse business community that includes many thousands of small businesses, which generate substantial economic activity and provide numerous employment opportunities throughout the State; and

WHEREAS, small businesses that employ less than 100 people each account for nearly half of all jobs in the State; and

WHEREAS, the State's economic strength and vitality are inextricably linked to the continued growth and success of small and emerging business enterprises; and

WHEREAS, minority- and women-owned businesses comprise a significant percentage of the State's small businesses; and

WHEREAS, New Jersey's diverse population is an invaluable asset to the State and its business community; and

WHEREAS, each year the State enters into billions of dollars worth of contracts to obtain construction and construction-related services, as well as other goods and services needed by State departments and agencies; and

WHEREAS, it is a priority of my administration to take all necessary remedial steps to overcome the factors that have operated to prevent or inhibit participation by minority- and women-owned business enterprises in the procurement opportunities offered by the State, and to ensure that State government renews its commitment to the utilization of minority- and women-owned business enterprises in its procurement practices through increased outreach, enhanced transparency, and effective monitoring of the progress made in this regard; and

WHEREAS, the State has previously taken steps intended to identify, quantify, and remedy racial and gender disparities resulting from its procurement practices; and

WHEREAS, in 1984, the State adopted the New Jersey Set-Aside Act, N.J.S.A. 52:32-17 et seq. (the "Set-Aside Act"), in an effort to address historic discrimination based upon race and gender in the State's procurement practices; and

WHEREAS, in 1989, the Supreme Court of the United States concluded, in the case of *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), that a race-based set-aside program established by a local government entity was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it was not justified by a compelling interest and narrowly tailored to accomplish a remedial purpose; and

WHEREAS, the Supreme Court in *Croson* indicated that government set-aside programs based on racial classifications must adhere to strict constitutional standards, including that such programs or policies must be justified based on strong evidence of actual discrimination carried out by the governmental entity and that the program or policy must be narrowly tailored to remedy the discrimination; and

WHEREAS, in order to comply with the constitutional requirements outlined in the *Croson* decision, Governors Kean, Florio, Whitman, McGreevey, and Codey took various steps to evaluate past and present discrimination in the State's procurement practices, beginning with Governor Thomas H. Kean's issuance of Executive Order No. 213 (1989) establishing the "Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts" (the "Commission"); and

WHEREAS, the Commission issued its report in 1993, which contained evidence of widespread discrimination against firms owned and operated by minorities and women and indicated that these firms experience pervasive exclusion from the public contracting process; and

WHEREAS, in light of the Commission's findings, Governor James J. Florio issued Executive Order No. 84 (1993) establishing a set-aside program mandating that minority- and women-owned firms be awarded

specific percentages of public contracts, and Governor Christine T. Whitman thereafter issued Executive Order No. 112 (2000), which established the "Governor's Study Commission on Discrimination in State Employment and Contracting" (the "Study Commission") and charged that Study Commission with the task of examining the nature and scope of any past or present discrimination in State employment and procurement practices; and

WHEREAS, the Study Commission, later renamed the "Disparity Study Commission," continued its investigative work through the administrations of Governors James E. McGreevey and Richard J. Codey; and

WHEREAS, in 2003, the Set-Aside Act was permanently enjoined by a Consent Decree entered by the federal district court in the matter of GEOD v. State of New Jersey, Civil Action No. 01-2656 (SRC) (D.N.J.) (the "Consent Decree") and following entry of the Consent Decree, Governor McGreevey issued Executive Order No. 71 (2003) eliminating set-aside goals for minority- and women-owned businesses and instead instituting a race- and gender-neutral small business set-aside program; and

WHEREAS, in 2005, the Disparity Study Commission issued its reports, the "Disparity Study of Procurement in Professional Services, Other Services and Goods and Commodities Report" and the "Construction Services Disparity Report" (the "Disparity Studies"), finding significant disparities between firms ready, willing, and able to do business with the State and those firms actually awarded contracts to provide goods and services to State departments, agencies, authorities, colleges, and universities; and

WHEREAS, the results of the Disparity Studies clearly demonstrate the necessity of immediate action to promote more inclusive purchasing and procurement processes;

NOW, THEREFORE, I, JON S. CORZINE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established within the Office of Economic Growth, which was created at the outset of this administration to oversee job creation and business expansion activities in the State of New Jersey, a Division of Minority and Women Business Development (the "Division"). The purpose of the Division shall be to administer and monitor policies, practices, and programs that will further the State's efforts to ensure equal opportunity for minority- and women-owned business enterprises ("M/WBEs") to participate in State purchasing and procurement processes.
2. A Director, who shall report to the Chief of the Office of Economic Growth and the State Treasurer, or their designees, shall lead the Division. The Director also shall have the title of Advisor to the Governor.
3. The Governor shall appoint the Director of the Division. The Director may, in consultation with the Department of Personnel and the Director of the Office of Management and Budget in the Department of the Treasury, utilize any available persons or resources needed to carry out the duties of the Division as set forth in this Order.
4. The Director shall be responsible for administering and monitoring programs to increase the participation of minorities and women in State purchasing and procurement processes in an effort to remedy the significant disparities identified in the Disparity Studies. Specifically, the Director shall:
 - a. Develop M/WBE utilization goals, initially basing those goals on data contained in the Disparity Studies and thereafter periodically updating those goals based on subsequent studies, findings, recommendations, or other information as approved by the Division, and develop M/WBE policies and programs aimed at meeting those goals through race- and gender-neutral means;
 - b. Track and monitor, in coordination with the Division of Purchase and Property in the Department of the Treasury and the State departments, agencies, authorities, colleges, and universities, all of the State's procurement practices, including but not limited to the share of contracting dollars paid to M/WBEs through formal bidding processes, pursuant to delegated purchasing authority, and under cooperative purchasing agreements;
 - c. Establish standards and procedures that State departments, agencies, authorities, colleges, and universities shall use in developing annual procurement opportunity plans, which shall incorporate appropriate M/WBE utilization goals;
 - d. Obtain quarterly reports from each State department, agency, authority, college, and university relating to their purchasing and procurement activities;

- e. Create and maintain an electronic M/WBE supplier database and ensure that listings of qualified M/WBEs are provided to the appropriate State entities as procurement opportunities arise; and
 - f. Provide an annual report to the Governor, the Legislature, and the public concerning the purchasing and procurement activities of the State departments, agencies, authorities, colleges, and universities.
5. The Director of the Division, or a designee, may consult with experts or other knowledgeable individuals in the public or private sector on any aspect of the Division's mission.
 6. Each State department, agency, authority, college, and university shall designate, within thirty (30) days of the issuance of this Order, an M/WBE liaison, who shall have direct, independent access to his or her Commissioner, Secretary, department head, or similar cabinet-level official concerning M/WBE program matters, including but not limited to coordination with the Director as required pursuant to this Order.
 7. Furthermore, there is hereby established a Minority and Women's Business Development Advisory Council (the "Council"). The Council shall be comprised of individuals representing varying racial, ethnic, and socio-economic backgrounds who have experience in business, State procurement and contracting processes, legal affairs concerning equal opportunity in public contracting, or other areas relevant to the activities of the Council.
 8. No Council member shall actively seek to secure a State contract or other agreement to provide goods or services to the State on behalf of any entity or organization of any kind in which the member has any personal or pecuniary interest.
 9. The Council shall consist of thirteen (13) voting members as follows:
 - a. The Chief of the Office of Economic Growth, or a designee, who shall serve ex officio;
 - b. The State Treasurer, or a designee, who shall serve ex officio;
 - c. The Secretary of the New Jersey Commerce, Economic Growth and Tourism Commission, or a designee, who shall serve ex officio;
 - d. Ten (10) public members, appointed by the Governor, two of whom shall be based upon the recommendation of the President of the Senate, provided that no more than one of whom shall be of the same political party, and two of whom shall be appointed based upon the recommendation of the Speaker of the General Assembly, provided that no more than one of whom shall be of the same political party.
 10. The public members of the Council shall serve voluntarily and for terms of two years and until such time as a successor is appointed and qualified, except that of those members first appointed, five (5) shall be appointed for a term of two (2) years and five (5) shall be appointed for a term of one (1) year. Any vacancy caused by reason other than expiration of a member's term shall be filled in the same manner as the original appointment for the unexpired term only.
 11. The Governor shall designate a Chairperson who will preside over all meetings of the Council. A Vice-Chairperson may be selected by a majority vote of the Council.
 12. The Council shall be provided with Executive Branch representatives who shall assist with administrative support and other necessary functions in order to carry out the duties of the Council.
 13. The Council shall advise the Director and the Division on all matters referred to it by the Director, or a designee, and may make recommendations to the Director on other relevant policy and implementation matters as the Council deems appropriate.
 14. As part of its duties under this Order, the Council may review the State's current procurement and contracting practices and make recommendations for the improvement thereof. The Council may consult with experts or other knowledgeable individuals in the public or private sector on any aspect of its mission.
 15. Each State department, agency, authority, college, and university is hereby directed, to the extent not inconsistent with law, to work cooperatively with the Division in order to increase participation by M/WBEs in the procurement opportunities offered by the State. The Division is authorized to call upon any State department, agency, authority, college, or university to provide such information, personnel, resources, or other assistance available to such agency as the Director deems necessary to

discharge the responsibilities of the Division under this Order. Each State department, agency, authority, college, and university is hereby required, to the extent not inconsistent with law, to cooperate fully with the Division and to furnish the Division with such information and assistance on as timely a basis as is necessary to accomplish the purposes of this Order.

16. This Order shall take effect immediately.

GIVEN, under my hand and seal this 15th day
of September, Two Thousand and Six, and of
the Independence of the United States, the Two
Hundred and Thirty-First.

/s/ Jon S. Corzine

Governor

[seal]

Attest:

/s/ Stuart Rabner

Chief Counsel to the Governor

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