

APPENDIX

Disparity in State Procurement Study Commission

Division of Property Management & Construction

Good morning. Thank you for the opportunity to come before the Procurement Study Commission to speak about construction procurement.

The DPMC is responsible for the procurement and administration of design and construction contracts for various State Departments and agencies including:

- Dept. of Human Services
- Dept. of Corrections
- Dept. of Environmental Protection
- Div. of Law & Public Safety
- NJ Building Authority
- Motor Vehicle Commission Facilities, DOT – Bldgs.; No roads.
- Capital Complex Facilities – Trenton (over 30 Bldgs.)

The current climate and conditions for small businesses (including minority and women owned firms) that seek to participate in State construction contract opportunities issued by the Department of Treasury, I believe, is good.

To give you an ideaTo date in FY 2019, SBE awards to prime contractors and subcontractors are:

- **29.4% FOR CONSTRUCTION CONTRACTS**
(\$41.8 mil. In awards; \$12.3 mil. in SBE contract awards)
- **45.6% FOR CONSULTANT SERVICES (A/E'S)**
(\$7 mil. in awards; \$3.6 mil. in SBE contract awards)

The Goal is 25%

These SBE contract percentages are the result of a concerted effort by DPMC's procurement staff to meet the established set-aside goals for the projects we award and the fact that many of the Division's projects are renovations and improvements to State facilities wherein the contract value of the project are typically **under \$500,000** (43 of 68 contract awards to date in FY19 were less than \$500K and only

12 over \$1M). As a result, many of the smaller design and construction firms are interested in competing for these projects.

An SBE might have a difficult time competing for a bid on a larger construction contract. However, as many of the Division's contracts are smaller in nature, SBE's can compete for smaller and medium size projects as the Prime contractors, or as a subcontractor on the larger construction contracts.

One barrier to small contractor bidding and interest in a public contract as a prime or a subcontractors may be the time it takes to prepare a bid. However, the Division tries to ensure that bidders have sufficient notice and time to develop bid on small and larger projects. Firms are notified of bidding opportunities directly by mail, through DPMC's website, and newspaper advertisements which help provide SBE firms the time to prepare a bid and larger firms have sufficient time to partner with SBE contractors to meet the set-aside requirements of a bid.

Contractor classification is required by State law for the bidding on State contracts. DPMC staff attends outreach events with the goal of reaching as many small, minority, and women-owned firms as possible to ensure firms are educated on classification requirements for trades and disciplines. Additionally, since bonding is not required for contracts under \$200,000, firms who have no or little bonding capacity can compete for these types of projects.

DPMC is responsible for classifying construction contractors and once approved, firms may bid on DPMC projects with the approved trade and dollar rating. Classification is good for two years, and then firms must be re-classified.

Additionally, there are Affirmative Action requirements for all construction contracts. Each contractor and sub-contractor must meet the State's Affirmative Action requirements. These requirements are set forth in the bid and contract. The requirements are established by the county the project resides in.

- MINORITY AA PERCENTAGE – EST. BY COUNTY; RANGES FROM 60% (Hudson Co.) to 30% (Mercer Co. to 3% (Hunterdon Co.)
- WOMEN AA PERCENTAGE – EST. AS 6.9% STATEWIDE.

The Affirmative Action requirements also increase the amount of participation by minorities and women owned trades on construction projects.

The Department of Labor and Workforce Development monitors legal compliance for all construction contracts.

I hope you find this information helpful in explaining how DPMC strives to reduce disparities in construction contracting for small, minority, and women-owned business enterprises and to increase their participation in State construction contracts awarded by DPMC.

If you have any questions, we would be happy to answer them.

Introduction

In representing the AACCNJ I would like to present a brief summary of information which describes the state of AA in New Jersey and supports the case of improving the process as well as providing incentives to expand the level of participation and awarding of more public contracts to AA businesses. Specifically, according to NJBIA there are approximately 1.1 million AA residents and over 80,000 AA owned businesses in New Jersey. AA have the highest level of poverty, unemployment, and incarceration rates in the State of NJ. The average net worth of AA is approximately \$6,000 as compared to whites which is about \$275,000. Although there are numerous AA elected officials on the municipal, county and state levels, there is not a focused strategy to ensure that more AA owned businesses are competing for public sector opportunities.

It is our opinion that if there was a level playing field to compete for professional service and goods and services opportunities and were awarded some of these contracts they would be in a better position to hire more AA employees thus reducing the unemployment levels, poverty levels and improving their capacity and sustainability over time. According to the 2010 US Economic Census, 93% of NJ AA owned businesses are sole proprietorships. Ironically, although a number of NJ corporations have supplier diversity goals, when pressed, you discover that contract levels with AA owned firms tend to be lower than women and other minority owned business groups.

One of the reasons for this as some have concluded is given that the State does not have a similar supplier program in place, which lessens or disincentivizes the private sector to be accountable to diversity and inclusion.

Having provided a foundation for our support of establishing Women and Minority Procurement goals with accountability for the State of New Jersey; I would like to recommend a few areas that the State can review and consider modifications to ensure a greater level of inclusion and fairness to obtain an improved threshold of participation.

1. Currently to perform municipal or school district audits there is a specialized certification in addition to the requirement to be a Certified Public Accountant (CPA) which provides for the financial reporting in another format other than General Accounting Principal Procedures

(GAPP). Our recommendation is that this should be changed to allow GAPP to be the standard, because by doing so you would expand the number of Certified Public Accountants to compete for public sector opportunities. It is my understanding that this would not adversely impact the integrity of the industry's financial standing.

2. It is not clearly defined what the process is to be included on the State Procurement Contract and therefore this is a barrier to inclusion while affording a monopolistic opportunity for a select group of major corporations and large companies.
3. Review the access to complete for professional services opportunities with the State of NJ, county and municipal governments. These opportunities are generally procured through an RFP process which is often written directly by or through the advisement of the firm who usually is awarded the contract. This is a significant problem because the current process gives an advantage to political donors.
4. Former Governor McGreevey, issued his first Executive Order which would require that all public contracts be subject to Project Labor Agreements which resulted in preference for unions. Although the threshold was later changed from all public contracts to those over \$5 million, the language in many state, county and municipal contract opportunities do not reflect that distinction.
5. The State of NJ should invest in a procurement monitoring system that would substantiate the outreach for women and minority participation on public contracts. The evaluation data should be verifiable in real-time and its implementation should be uniform and included on all appropriate public procurements. This would reduce the number of waivers granted and sanctions for violations should be severe. There are a number of companies awarded contracts from NJDOT who then send out announcements of their award and request for women and minorities seeking work or contract opportunities to apply, however, there is no process in place to substantiate the validity of their outreach effort.
6. The business registration application could be expanded to allow importation into other government agency registrations so that a business information can be accessed when that agency is sourcing for women and minority participation. This would make the registration process more

expansive while improving the number of vendors available for public sector opportunities. An opt out option should be included.

7. In our opinion the purpose of instituting a Diversity and Inclusion strategy for the State of NJ is to realize savings to taxpayers through innovation, efficiency, best practices; all of which can be achieved with the expansion of the pool of participants. We encourage increased public investment in technical assistance, mentor protégé and bonding programming, more accountability in the procurement process with a correlation to performance standards and ratings.
8. We recommend the establishment of a Office of Administration and Oversight (OAO) that would be charged with creating an accountability assessment procedures, including cost benefit reviews. This oversight organization can serve an important and effective role in evaluating the systems and procedures ultimate fairness in the state's procurement process.



State of New Jersey
 Disparity in State Procurement Study Commission
 c/o PO Box 624
 Trenton, NJ 08625

Hester Agudosi, Esq.
 Chair

Ronald L. Rice, Senator
 Vice Chair

MEMBERS:

Hon. Chris A. Brown
 Senator - 2nd Leg. District

Hon. Annette Chaparro
 Assemblywoman - 33rd Leg. District

Hon. Sandra B. Cunningham
 Senator - 31st Leg. District

Hon. Governor Richard J. Codey
 Senator - 27th Leg. District

Maurice Griffin, Acting Director
 Division Of Purchase & Property

Hon. Jamel C. Holley
 Assemblyman - 20th Leg. District

Hon. Nancy F. Munoz
 Assemblywoman - 21st Leg. District

Hon. Declan J. O'Scanlan
 Senator - 13th Leg. District

Hon. Nancy J. Pinkin MPA, CHE
 Assemblywoman - 18th Leg. District

Hon. Nellie Pow
 Senator - 35th Leg. District

Hon. Britnee Timberlake
 Assemblywoman - 34th Leg. District

Melanie Walter, Director
 Local Government Services

April 9, 2019

Honorable Philip D. Murphy
 Governor, State of New Jersey
 225 West State Street, 5th Floor
 PO Box 001
 Trenton, NJ 08625

Dear Governor Murphy,

The first meeting of the Disparity in Procurement Study Commission was held on February 19, 2019. As the newly elected Chair of the Commission I have been asked to reach out to you for assistance in ensuring compliance with the reporting requirements of Executive Order # 34 (attached).

By way of background, as the State Chief Diversity Officer, I previously distributed a Diversity and Inclusion Assessment Questionnaire to state departments, authorities and commissions. Among other things, the questionnaire sought procurement spend with minority, and women owned business enterprises (M/WBE's). Although I am pleased to share that there was 100 percent compliance in assessment responses received, further analysis revealed that many of the departments do not track M/WBE spend data. This is in large part due to unfamiliarity with the state's commitment to increase the participation of minorities and women in purchasing and procurement processes as well as the mandates of Executive Order #34.

In order for the Disparity in Procurement Study Commission to carry out its mandate to assess and determine disparities, if any, between the availability and utilization of small, disadvantaged, and minority and women-owned business enterprises in state contracting, immediate measures must be undertaken to capture and report procurement spend with diverse suppliers. Accordingly, the Commission requests the issuance of a directive from your office requiring all state departments, agencies, authorities, colleges and universities to capture and provide quarterly reports of contracting dollars paid to M/WBE's through formal bidding processes, pursuant to delegated purchasing authority, and under cooperative purchasing agreements.

Thank you in advance for your consideration and assistance with this request.

Very truly yours,

Hester Agudosi Esq., Chair
 Disparity in Procurement Study Commission

/attachment

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

Governor Jon S. Corzine

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