

WHEREAS, the State of Missouri is committed to enhancing the economic health and prosperity of Minority and Women Business Enterprises (M/WBEs) through the use of M/WBE contract benchmarks established in state contracts for supplies, services, and construction that are consistent with §§37.020 – 37.023, RSMo, and the findings of the most current disparity study; and

WHEREAS, upon funding being appropriated by the General Assembly in 2013, the Office of Administration (OA) commissioned a Disparity Study which was completed on October 24, 2014, that studied the utilization of M/WBEs in state contracts and the availability of M/WBEs in the applicable marketplace; and

WHEREAS, Executive Order 14-07 established the Disparity Study Oversight Review Committee to review the findings of the 2014 Disparity Study and to produce meaningful recommendations to assist the State of Missouri in developing a contracting process that is inclusive, promotes diversity, and provides greater opportunity for M/WBEs; and

WHEREAS, after conducting a thorough review and analysis of the findings of the 2014 Disparity Study, the Disparity Study Oversight Review Committee submitted its report to the Governor on January 27, 2015; and

WHEREAS, the Disparity Study Oversight Review Committee's report sets forth recommendations to help eliminate the lingering effects of discrimination to ensure a level playing-field for all Missouri business owners; and

WHEREAS, on September 14, 2015, the Ferguson Commission, created pursuant to Executive Order 14-15, released its final report which called for Missouri to implement a statewide M/WBE program "with outcomes measures that incorporate capacity building, mentoring, and education with respect to the state and local procurement system;" and

WHEREAS, the State of Missouri is dedicated to the compelling governmental interest of remedying race and sex based discrimination in a manner consistent with state and federal law.

NOW, THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, in recognition of the obligations of the State of Missouri and by virtue of the authority vested in me by the Constitution and the Laws of the State of Missouri, do hereby state that the following narrowly tailored policies and procedures shall be adopted by the Executive Branch of state government in procuring goods and services:

1. All state agencies shall make every feasible effort to increase the percentage of goods and services procured from certified M/WBEs in order to achieve the annual goals of 10% MBEs and 10% WBEs of all annual Executive Branch procurement funds. These efforts shall include participation in an Executive Branch Contract Compliance Council which shall, in cooperation with the Office of Administration, Office of Equal Opportunity (OEO), review procurement efforts to assist in meeting the requirements of this Executive Order.
2. Both the Division of Purchasing and Facilities Management, Design and Construction (FMDC) within the Office of Administration shall be authorized to implement the following program to increase M/WBE procurements:
 - a. Division of Purchasing and FMDC shall encourage prime contractors to subcontract with M/WBEs on state contracts. Division of Purchasing and FMDC contracts are permitted to include a provision setting forth participation of M/WBEs as prime contractors or subcontractors who perform a commercially useful function. M/WBE participation requirements shall be determined by the Division of Purchasing and FMDC, in consultation with OEO and the user agency, by evaluating the availability of M/WBE vendors in the applicable commodity/service and geographical area as determined by the most recent disparity study and other applicable factors. Division of Purchasing and FMDC shall use individual contract percentages to help meet the

state's annual program goals. The M/WBE participation will be evaluated for responsiveness along with other criteria in the award of a bid. The participation can be met through the use of prime contractors, subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation.

- b. Division of Purchasing and FMDC shall revise their policies and regulations to further implement this program which shall include a waiver provision for prime contractors who make a good faith effort to take all necessary and reasonable steps to attain such percentages but are otherwise unable to achieve them. Division of Purchasing and FMDC shall also establish enforcement procedures, in cooperation with OEO and the Contract Oversight Office within the Office of Administration, which shall include consequences for failure to meet percentage commitments unless a good faith waiver is obtained from the Division of Purchasing or FMDC, respectively.
 - c. Division of Purchasing and FMDC are authorized and directed to identify and consult with such other certifying entities as recommended by OEO in order to facilitate M/WBEs to participate in state procurements.
3. The Office of Administration shall also be authorized to:
- a. Conduct a comprehensive review of OEO and determine the need for increased funding and personnel to enable OEO to carry out the work it has been assigned.
 - b. Evaluate the state's current M/WBE eligibility standards and determine what revisions, if any, should be considered to applicable statutes and regulations. This includes an evaluation of whether M/WBE eligibility should be capped based upon a firm's gross income and/or personal net worth. The Office of Administration should refer to the Disparity Study and the Committee's report as a reference regarding potential revisions to the program's eligibility standards.
 - c. Research existing bonding and financing programs for small vendors that enhance access to bonding and working capital in order to reduce barriers to business development and success, and determine the feasibility of developing such a program within OEO.
 - d. Evaluate the existing experience and surety bonding requirements and determine what adjustments, if any, should be considered to facilitate increased M/WBE participation.
 - e. Evaluate the possibility of lengthening solicitation periods for vendors, whenever possible, in an effort to increase M/WBE participation.
 - f. Research the feasibility and consider establishing a Mentor-Protégé Program within OEO, whereby a larger firm provides instruction and training to an emerging firm to increase the protégé's skills, capacities, and business areas.
 - g. Educate and advise state agencies on implementing internal procedures that ensure compliance with §§ 34.055 – 34.057, RSMo.
 - h. Implement an electronic contracting system that provides access to state contracting information and collects measureable data to document the achievement of M/WBE goals.
4. OEO shall work with the Division of Purchasing and FMDC in the implementation of this Executive Order, and shall have the following responsibilities:
- a. Actively recruit, certify, and serve as a clearinghouse for M/WBEs to participate in the program.
 - b. Partner with agencies and organizations that conduct similar services that can provide technical assistance and supportive services.


- c. Cooperate with the Division of Purchasing, FMDC, and the Contract Oversight Office in the administration and enforcement of the M/WBE participation program and contract requirements.
 - d. Cooperate with the Division of Purchasing and FMDC in the development of policies, forms, and procedures to carry out the requirements of the M/WBE participation program.
 - e. Provide guidance to the Division of Purchasing and FMDC in the setting of M/WBE individual contract percentages.
 - f. Review and record the effectiveness of the state agencies' participation in the program in light of the availability and utilization of eligible M/WBEs on individual contracts, and make recommendations to the agencies for improvement and enforcement of the program.
 - g. Provide outreach to M/WBEs to educate firms about the program, the state's procurement process, and business elements such as obtaining bonding, lines of credit, or other related services. Outreach efforts shall also serve to foster enhanced working relationships between M/WBEs and prime contractors.
 - h. Recommend sanctions for contractors who fail to faithfully execute M/WBE participation requirements during the course of contract performance.
5. OEO shall review the program annually to monitor the level of M/WBE participation achieved in state contracting areas during the previous fiscal year. An assessment of the program and whether the continuation is necessary shall be prepared by OEO and delivered to the Governor and the General Assembly by March after the completion of the fiscal year. After it is determined by OEO that M/WBEs participate in state contracts at a level commensurate with their presence and capability in the state marketplace, then the program set forth in this Executive Order shall be terminated. If the program is still deemed to be necessary on March 1, 2019, a new Disparity Study should be conducted and a new Disparity Study Oversight Review Committee should be appointed to review the results of that study.
6. This Order shall take effect immediately and supersedes Executive Order 05-30.



IN WITNESS WHEREOF, I have hereunto set my hand and cause to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 21st day of October, 2015.


Jeremiah W. (Jay) Nixon
Governor

ATTEST:


Jason Kander
Secretary of State