

SEP 08 2005

**EXECUTIVE ORDER
05-30**
SECRETARY OF STATE
COMMISSION DIVISION

WHEREAS, since 1990, the Office of Administration, State of Missouri has endeavored 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 targets 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;" pursuant to Senate Bills 808 & 672 passed by the General Assembly and signed into law by then Governor Ashcroft; and

WHEREAS, such a 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 women-owned business enterprises (M/WBEs) in the state; and

WHEREAS, Executive Order 98-21 established goals to increase the percentage of goods and services procured from certified M/WBEs; and

WHEREAS, the goals for M/WBE participation established in Executive Order 98-21 have not been substantially met; and statistically significant disparities in state contractual expenditures for construction and the purchase of goods and services from minority and women-owned businesses in the state still exist; and

WHEREAS, on September 27, 2004, Behavioral Interventions, Inc. filed a lawsuit in the U.S. District Court, in the Western District of Missouri challenging the propriety of Missouri's M/WBE program. In January 2005, a preliminary injunction was issued ordering the Office of Administration, State of Missouri to suspend the placing of M/WBE requirements in any procurement by the State of Missouri. Because of the uncertainty created in the aftermath of the litigation, the program has undergone comprehensive revision not only to withstand constitutional scrutiny, but also to more adequately address the compelling needs and obstacles of minority and women-owned businesses to gain greater access to business opportunities, both public and private, within the state of Missouri; and

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

WHEREAS, the State of Missouri is committed to enhancing the economic health and prosperity of the state by promoting the greater use of minority and women-owned businesses. Job creation for Missouri residents, and therefore the success of minority and women-owned businesses, are paramount goals of this Administration; and

WHEREAS, the State of Missouri will gain enormously from improvements in expanded business opportunities for Missouri residents created by the expansion of minority and women-owned businesses and through the additional tax revenues generated by those individuals and businesses; and

WHEREAS, to further these goals, which are of the highest priority of this Administration, it is the policy of this Administration to develop economic opportunities for minority and women-owned businesses wherever possible.

NOW, THEREFORE, I, Matt Blunt, 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. The Office of Supplier and Workforce Diversity (OSWD) is established to replace the Office of Equal Opportunity. All the authority, powers and privileges of the Office of Equal Opportunity is transferred to the OSWD. The Director of OSWD shall be appointed by the Governor. The Director of OSWD shall report to the Commissioner of Administration. The Director shall have primary responsibility for assisting in the coordination and implementation of affirmative action throughout all departments of the executive branch of state government, including programs to increase M/WBE participation, and advising the Governor on issues regarding equal employment opportunity, affirmative action, and efforts to administer affirmative action goals and timetables for implementation throughout the departments of the executive branch.

The Office of State Compliance Officer is hereby abolished. The Director of OSWD shall be the State's chief compliance officer for the executive branch of state government to ensure that the State of Missouri is complying with all federal and state laws concerning equal employment opportunity and affirmative action. If needed, the Director shall assist each department in developing an Affirmative Action Plan of Implementation. Additionally, the Director of OSWD shall review progress reports of the departments and shall meet biannually with each department director to evaluate departmental results and determine the course of future affirmative action goals, timetables, recruiting, planning, and implementation. The results of each meeting shall be reported in writing to the Governor and Commissioner of Administration.

Not later than January first of each calendar year, the Director of OSWD shall provide a report to the Governor and the Commissioner of Administration which summarizes the activities of each department pursuant to this Order and which contains recommendations for additional programs to accomplish the purposes of this Order.

The Commissioner of Administration shall provide the Director of OSWD with such facilities, staff, resources, equipment, and supplies as are necessary to carry out the duties set forth herein. The Director of OSWD shall submit a proposal each fiscal year to the Commissioner of Administration detailing the needs of the Office of Supplier and Workforce Diversity.

2. All state agencies shall continue to make every feasible effort to target the percentage of goods and services procured from certified MBEs and WBEs to 10% and 5%, respectively. These efforts shall include participation in an Executive Branch Contract Compliance Council which shall, in cooperation with the OSWD, review procurement efforts to assist in meeting the requirements of this Executive Order.
3. The Divisions of Purchasing and Materials Management (PMM) and Facilities Management, Design and Construction (FMDC) within the Office of Administration shall be authorized to implement the following programs to increase M/WBE procurement:
 - a. PMM shall be authorized to encourage prime contractors to subcontract with M/WBEs on all contracts of \$100,000 or greater. OSWD contracts shall include a provision for participation which will allow the bidders to tailor a plan to fit the contract. Mandatory percentage goals of M/WBE participation shall not be established in violation of federal or state law. M/WBE participation shall be encouraged by PMM in consultation with OSWD and the user agency depending on the availability of M/WBE vendors in the applicable commodity/service and geographical area. PMM shall consider M/WBE participation as a significant factor in a contract bid. The M/WBE participation will be evaluated along with other criteria in the award of a bid. It is intended that 10% MBE and 5% WBE percentage is desired. 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.

OSWD in conjunction with PMM shall also appoint a M/WBE Purchasing Manager for the purpose of promoting and coordinating the participation of M/WBEs in State of Missouri contracts.

b. FMDC shall be authorized to evaluate M/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, FMDC shall make special efforts to target M/WBEs as prime contractors. Overall participation targets for each fiscal year shall be 10% MBE and 5% WBE; however, mandatory percentage goals shall not be established in violation of federal or state law. The targets may be met through the use of prime contractors, subcontractors, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation.

FMDC shall also be authorized to seek participation of M/WBEs on construction contracts. The targets shall be set on a project by project basis by FMDC in consultation with the OSWD, taking into account the availability of M/WBE contractors in the applicable geographic area and construction trade, with the overall participation targets for each fiscal year at 10% MBE and 5% WBE. The targets may be met through the use of prime contractors, subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation.

c. Both FMDC and the PMM shall establish policies or rules to implement these programs which shall include a waiver provision for prime contractors who make a good faith effort to attain such targets but do not succeed. They shall also establish enforcement procedures in cooperation with the OSWD to assist contractors to meet subcontracting commitments. Their programs shall be reviewed annually to determine whether targets should be modified.

d. FMDC and PMM are authorized and directed to identify and consult with such entities as the St. Louis Minority Business Council, the Kansas City Minority Supplier Council and the Kansas City Council of Women Business Owners in identifying M/WBEs to participate in state procurements.

4. OSWD shall monitor the programs and work with FMDC and PMM in their implementation. The OSWD shall have the following responsibilities and carry out the following tasks:

a. to actively recruit, facilitate and serve as a clearinghouse for M/WBE contractors to participate in the programs;

b. to cooperate with the PMM and the FMDC in the administration and enforcement of the M/WBE participation programs;

c. to cooperate with the PMM and the FMDC in the development of policies, forms, and procedures to carry out the requirements of the M/WBE participation programs;

d. to participate in M/WBE target setting;

e. to perform fact-gathering and record-keeping to determine both the effectiveness of state participation programs and the availability and utilization of eligible M/WBEs on individual projects, including levels of participation and availability in specific areas;

f. to certify contractors as M/WBEs;

g. to assess the continuing need for M/WBE participation targets for specific contracting areas;

h. to monitor contractor participation with M/WBE targets; and

- i. to recommend sanctions for contractors who fail to faithfully execute M/WBE participation plans during the course of contract performance.
5. The programs shall be reviewed annually to monitor the level of M/WBE participation achieved in state contracting areas during the previous year. An assessment of the programs and whether their continuation is necessary shall be delivered to the Governor and the General Assembly. After it is determined that M/WBEs participate in state contracts in a manner commensurate with their presence and capability in the state marketplace, the programs set forth in section 2 will be terminated.
6. Executive Order No. 98-21 (1998) and article II of Executive Order 94-03 (1994) are hereby superseded and replaced by this Executive Order.



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 8th day of September, 2005.

Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State