



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1923

Introduced 2/10/2011, by Sen. Toi W. Hutchinson

#### SYNOPSIS AS INTRODUCED:

20 ILCS 2705/2705-600

Amends provisions of the Department of Transportation Law of the Civil Administrative Code of Illinois regarding the Department of Transportation's target market program. Makes various changes concerning: the duties of the Department and the chief procurement officer; reviewing evidence of discrimination; establishment and implementation of a target market program tailored to address findings of discrimination; reports to the General Assembly; determination of contract formation and bidding procedures for target market contracts; requirements relating to participation in the target market program; inclusion of contracts funded by the federal government; deletion and designation of contracts for purposes of the target market program; payments under target market contracts; nomenclature; and other matters. Effective immediately.

LRB097 07401 HEP 47510 b

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Department of Transportation Law of the  
5 Civil Administrative Code of Illinois is amended by changing  
6 Section 2705-600 as follows:

7 (20 ILCS 2705/2705-600)

8 Sec. 2705-600. Target market program. The Department of  
9 Transportation shall regularly review any and all evidence of  
10 discrimination including but not limited to evidence used for  
11 purposes of establishing disadvantaged business enterprise  
12 goals applicable to minority-owned businesses and female-owned  
13 businesses pursuant to subsection (d) of Section 6 of the  
14 Business Enterprise for Minorities, Females, and Persons with  
15 Disabilities Act. If, after reviewing such evidence, the  
16 Department finds and the chief procurement officer concurs in  
17 the findings that discrimination exists against a specific  
18 group, race, or gender, the chief procurement officer has the  
19 power to establish and implement a target market program  
20 tailored to address the specific findings made by the  
21 Department after a public hearing at which minority, women's,  
22 and general contractor groups, community organizations, and  
23 other interested parties shall have the opportunity to provide

1 comments. As used in this Section, "target market program"  
2 means a procurement process whereby construction contracts  
3 selected by the chief procurement officer are let utilizing  
4 procedures designed to encourage and facilitate bidding by  
5 minority-owned businesses, female-owned businesses, and  
6 disadvantaged businesses as defined in the Business Enterprise  
7 for Minorities, Females, and Persons with Disabilities Act. A  
8 target market program shall incorporate ~~In order to achieve all~~  
9 ~~diversity goals, the Department's chief procurement officer~~  
10 ~~shall develop and coordinate a target market program including~~  
11 the following elements:

12 (1) In January of each year, the Department and the  
13 chief procurement officer shall report jointly to the  
14 General Assembly the results of hearings held pursuant to  
15 this Section, and shall report the actions to be taken to  
16 address the findings including the establishment and  
17 implementation of target market initiatives. The dollar  
18 value of all contracts bid under the target market program  
19 shall count towards the achievement of the goals for  
20 utilization of minority-owned businesses, female-owned  
21 businesses, and disadvantaged businesses established for  
22 the State-funded construction program pursuant to  
23 subsection (d) of Section 6 of the Business Enterprise for  
24 Minorities, Females, and Persons with Disabilities Act.  
25 ~~estimate the dollar value of all contracts to be awarded by~~  
26 ~~the Department during that year and shall multiply that~~

1 ~~total by the minority-owned business target market~~  
2 ~~percentage and the women-owned business target market~~  
3 ~~percentage for that year. Contracts with an estimated~~  
4 ~~dollar value equal to those products shall be set aside~~  
5 ~~(prior to advertisement in the case of contracts to be~~  
6 ~~awarded by bid) to be let only to qualified minority owned~~  
7 ~~businesses and qualified women owned businesses,~~  
8 ~~respectively.~~

9 (2) The chief procurement officer shall work with the  
10 officers and divisions of the Department to determine the  
11 appropriate designation of contracts as target market  
12 contracts. The chief procurement officer working with the  
13 Department shall determine appropriate contract formation  
14 and bidding procedures for target market contracts  
15 including but not limited to: division of procurements so  
16 designated into contract award units to facilitate offers  
17 or bids from minority-owned businesses and female-owned  
18 businesses; direct solicitation of bids or offers from  
19 minority-owned businesses and female-owned businesses;  
20 providing various contracting opportunities to encourage  
21 maximum involvement of minority-owned businesses and  
22 female-owned businesses; removal of bid bond requirements  
23 for minority-owned businesses and female-owned businesses;  
24 and identification of sheltered market contracts as  
25 defined in subsection (d) of Section 6 of the Business  
26 Enterprise for Minorities, Females, and Persons with

1        Disabilities Act. ~~To the extent practical, the chief~~  
2        ~~procurement officer shall divide the procurements so~~  
3        ~~designated into contract award units of economically~~  
4        ~~feasible production runs in order to facilitate offers or~~  
5        ~~bids from minority owned businesses and women owned~~  
6        ~~businesses. In making the annual designation of target~~  
7        ~~market contracts, the chief procurement officer shall~~  
8        ~~attempt to vary the included procurements so that a variety~~  
9        ~~of goods and services produced by different minority owned~~  
10       ~~businesses and women owned businesses shall be set aside~~  
11       ~~each year.~~ Minority-owned businesses and female-owned  
12       ~~women-owned~~ businesses shall remain eligible to seek the  
13       procurement award of contracts that have not been  
14       designated as target market contracts.

15       (3) The chief procurement officer ~~Department shall~~  
16       ~~develop a list of minority owned businesses and~~  
17       ~~women owned businesses that are interested in~~  
18       ~~participating in the target market program, including the~~  
19       ~~type of contract in which each minority owned businesses~~  
20       ~~and women owned businesses is interested in participating.~~  
21       ~~The Department~~ may make participation in the target market  
22       program dependent upon submission to stricter compliance  
23       audits than are generally applicable. No contract shall be  
24       eligible for inclusion in the target market program unless  
25       ~~the list developed by~~ the Department determines ~~indicates~~  
26       that there are at least 3 ~~qualified~~ minority-owned

1 businesses or female-owned ~~women-owned~~ businesses  
2 interested in participating in that type of contract. The  
3 Department with concurrence by the chief procurement  
4 officer may waive this requirement for a particular  
5 contract if the particular contract would have a  
6 significant impact on participating businesses. The  
7 Department with concurrence by the chief procurement  
8 officer may develop guidelines to regulate the level of  
9 participation of individual minority-owned businesses and  
10 female-owned ~~women-owned~~ businesses in the target market  
11 program in order to prevent the domination of the target  
12 market program by a small number of those entities. The ~~if~~  
13 ~~necessary or useful,~~ the Department may require  
14 minority-owned businesses and female-owned ~~women-owned~~  
15 businesses to participate in training programs offered by  
16 the Department or other State agencies as a condition  
17 precedent to participation in the target market program.

18 (4) Participation in the target market program shall be  
19 limited to prequalified minority-owned businesses and  
20 female-owned ~~women-owned~~ businesses and joint ventures  
21 consisting exclusively of minority-owned businesses,  
22 female-owned ~~women-owned~~ businesses, or both, that are  
23 certified as disadvantaged businesses pursuant to the  
24 provisions of subsection (d) of Section 6 of the Business  
25 Enterprise for Minorities, Females, and Persons with  
26 Disabilities Act. The Department may include previously

1 certified but graduated firms that meet the definition of  
2 "business concern or business" under the Business  
3 Enterprise for Minorities, Females, and Persons with  
4 Disabilities Act. ~~A The prime contractor on a target market~~  
5 contract may subcontract up to 50% of the dollar value of  
6 the target market contract to subcontractors who are not  
7 minority-owned businesses or female-owned ~~women-owned~~  
8 businesses.

9 (5) The Department in conjunction with the chief  
10 procurement officer may include in the target market  
11 program contracts that are funded by the federal government  
12 to the extent allowed by federal law and may vary the  
13 standards of eligibility of the target market program ~~(for~~  
14 ~~example, by allowing the participation of businesses owned~~  
15 ~~by a person with a disability)~~ to the extent necessary to  
16 comply with the federal funding requirements.

17 (6) If no satisfactory bid or response is received with  
18 respect to a contract that has been designated as part of  
19 the target market program, the chief procurement officer  
20 ~~Department~~ may delete that contract from the target market  
21 program. In addition, the chief procurement officer shall  
22 thereupon designate ~~and set aside for the target market~~  
23 ~~program~~ additional contracts corresponding in approximate  
24 value to the contract that was deleted from the target  
25 market program, to the extent feasible.

26 (7) In order to facilitate the performance of target

1 market contracts by minority-owned businesses and  
2 female-owned ~~women-owned~~ businesses, the Department ~~chief~~  
3 ~~procurement officer~~ may expedite payments under target  
4 market contracts, ~~may reduce retainages under target~~  
5 ~~market contracts when appropriate,~~ and may pay the  
6 contractor a portion of the value of a target market  
7 contract at the time of award as an advance to cover  
8 start-up and mobilization costs.

9 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793  
10 for the effective date of P.A. 96-795).)

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.