

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. In order to remedy
9 particular incidents and patterns of egregious race or gender
10 discrimination, the chief procurement officer, in consultation
11 with the Department, shall have the power to implement a target
12 market program incorporating the following terms: ~~achieve all~~
13 ~~diversity goals, the Department's chief procurement officer~~
14 ~~shall develop and coordinate a target market program including~~
15 ~~the following elements:~~

16 (0.5) Each fiscal year, the Department shall review any
17 and all evidence of discrimination related to
18 transportation construction projects. Evidence of
19 discrimination may include, but is not limited to: (i) the
20 determination of the Department's utilization of
21 minority-owned and female-owned firms in its prime
22 contracts and associated subcontracts; (ii) the
23 availability of minority-owned and female-owned firms in

1 the Department's geographic market areas and specific
2 construction industry markets; (iii) any disparities
3 between the utilization of minority-owned and female-owned
4 firms in the Department's markets and the utilization of
5 those firms on the Department's prime contracts and
6 subcontracts in those markets; (iv) any disparities
7 between the utilization of minority-owned and female-owned
8 firms in the overall construction markets in which the
9 Department purchases and the utilization of those firms in
10 the overall construction economy in which the Department
11 operates; (v) evidence of discrimination in the rates at
12 which minority-owned and female-owned firms in the
13 Department's markets form businesses compared to similar
14 non-minority-owned and non-female-owned firms in the
15 Department's markets and in the dollars earned by such
16 businesses; and (vi) quantitative and qualitative
17 anecdotal evidence of discrimination. If after reviewing
18 such evidence, the Department finds and the chief
19 procurement officer concurs in the findings that the
20 Department has a strong basis in evidence that it has a
21 compelling interest in remedying the identified
22 discrimination against a specific group, race, or gender,
23 and that the only remedy for such discrimination is a
24 narrowly tailored target market, the chief procurement
25 officer, in consultation with the Department, has the power
26 to establish and implement a target market program tailored

1 to address the specific findings of egregious
2 discrimination made by the Department, after a public
3 hearing at which minority, female, and general contractor
4 groups, community organizations, and other interested
5 parties shall have the opportunity to provide comments.

6 (1) In January of each year, the Department and the
7 chief procurement officer shall report jointly to the
8 General Assembly the results of any evidentiary inquiries
9 or studies that establish the Department's compelling
10 interest in remedying egregious discrimination based upon
11 strong evidence of the need for a narrowly tailored target
12 market to remedy such discrimination and public hearings
13 held pursuant to this Section, and shall report the actions
14 to be taken to address the findings, including, if
15 warranted, the establishment and implementation of any
16 target market initiatives. ~~estimate the dollar value of all~~
17 ~~contracts to be awarded by the Department during that year~~
18 ~~and shall multiply that total by the minority owned~~
19 ~~business target market percentage and the women owned~~
20 ~~business target market percentage for that year. Contracts~~
21 ~~with an estimated dollar value equal to those products~~
22 ~~shall be set aside (prior to advertisement in the case of~~
23 ~~contracts to be awarded by bid) to be let only to qualified~~
24 ~~minority owned businesses and qualified women owned~~
25 ~~businesses, respectively.~~

26 (2) The chief procurement officer shall work with the

1 officers and divisions of the Department to determine the
2 appropriate designation of contracts as target market
3 contracts. ~~The~~ ~~To the extent practical,~~ the chief
4 procurement officer, in consultation with the Department,
5 shall determine appropriate contract formation and bidding
6 procedures for target market contracts, including, but not
7 limited to, the dividing of ~~divide the~~ procurements so
8 designated into contract award units ~~of economically~~
9 ~~feasible production runs~~ in order to facilitate offers or
10 bids from minority-owned businesses and female-owned
11 ~~women-owned~~ businesses and the removal of bid bond
12 requirements for minority-owned businesses and
13 female-owned businesses. ~~In making the annual designation~~
14 ~~of target market contracts, the chief procurement officer~~
15 ~~shall attempt to vary the included procurements so that a~~
16 ~~variety of goods and services produced by different~~
17 ~~minority owned businesses and women owned businesses shall~~
18 ~~be set aside each year.~~ Minority-owned businesses and
19 female-owned ~~women-owned~~ businesses shall remain eligible
20 to seek the procurement award of contracts that have not
21 been designated as target market contracts.

22 (3) ~~The Department shall develop a list of~~
23 ~~minority-owned businesses and women-owned businesses that~~
24 ~~are interested in participating in the target market~~
25 ~~program, including the type of contract in which each~~
26 ~~minority owned businesses and women owned businesses is~~

1 ~~interested in participating.~~ The chief procurement officer
2 ~~Department~~ may make participation in the target market
3 program dependent upon submission to stricter compliance
4 audits than are generally applicable. No contract shall be
5 eligible for inclusion in the target market program unless
6 ~~the list developed by~~ the Department determines ~~indicates~~
7 that there are at least 3 ~~qualified~~ minority-owned
8 businesses or female-owned ~~women-owned~~ businesses
9 interested in participating in that type of contract. The
10 Department, with the concurrence of the chief procurement
11 officer, may develop guidelines to regulate the level of
12 participation of individual minority-owned businesses and
13 female-owned ~~women-owned~~ businesses in the target market
14 program in order to prevent the domination of the target
15 market program by a small number of those entities. The ~~If~~
16 ~~necessary or useful,~~ the Department may require
17 minority-owned businesses and female-owned ~~women-owned~~
18 businesses to participate in training programs offered by
19 the Department or other State agencies as a condition
20 precedent to participation in the target market program.

21 (4) Participation in the target market program shall be
22 limited to minority-owned businesses and female-owned
23 ~~women-owned~~ businesses and joint ventures consisting
24 exclusively of minority-owned businesses, female-owned
25 ~~women-owned~~ businesses, or both, that are certified as
26 disadvantaged businesses pursuant to the provisions of

1 Section 6(d) of the Business Enterprise for Minorities,
2 Females, and Persons with Disabilities Act. A firm awarded
3 ~~The prime contractor on~~ a target market contract may
4 subcontract up to 50% of the dollar value of the target
5 market contract to subcontractors who are not
6 minority-owned businesses or female-owned ~~women-owned~~
7 businesses.

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

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

1 (7) The chief procurement officer, in consultation
2 with the Department, shall promulgate such rules as he or
3 she deems necessary to administer the target market
4 program. ~~In order to facilitate the performance of target~~
5 ~~market contracts by minority owned businesses and~~
6 ~~women owned businesses, the chief procurement officer may~~
7 ~~expedite payments under target market contracts, may~~
8 ~~reduce retainages under target market contracts when~~
9 ~~appropriate, and may pay the contractor a portion of the~~
10 ~~value of a target market contract at the time of award as~~
11 ~~an advance to cover start-up and mobilization costs.~~

12 If any part, sentence, or clause of this Section is for any
13 reason held invalid or to be unconstitutional, such decision
14 shall not affect the validity of the remaining portions of this
15 Section.

16 This Section is repealed on June 30, 2014.

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

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.