

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION

TARGETED GROUP DESIGNATION FOR
PURCHASING AND CONTRACTING CONDUCTED
UNDER MINN. STAT. CHAPTER 16C, MINN.
STAT. §161.321, AND MINN. STAT. § 473.142

FINDINGS OF FACT,
CONCLUSIONS
AND ORDER

INTRODUCTION

1. Small businesses are major contributors to jobs and revenue growth in Minnesota.
2. Businesses owned and operated by minorities, women, veterans and disabled individuals make significant contributions to Minnesota's economy.
3. Public spending can leverage small business development which in turn can help address issues such as job growth, increased tax revenue, increased human capital and reduction in dependency and crime.
4. Public spending to leverage small business development is a priority for Minnesota's executive branch leadership and part of a larger strategy to make Minnesota globally competitive.
5. State and local government agencies are strongly encouraged to develop programs to help build the capacity of Minnesota's small businesses.
6. State executive branch agency purchasing and contracting conducted under the authority of Minnesota Statutes Chapter 16C must, at minimum, comply with this order.

FINDINGS OF FACT

1. Minn. Stat. §16C.16, subd. 5, requires the Commissioner of Administration ("Commissioner") to periodically designate businesses that are majority owned and operated by specific minorities, women, or persons with a substantial physical disability as targeted group businesses within purchasing categories as determined by the Commissioner.
2. Pursuant to the above-cited provision, the Commissioner may target a group within a purchasing category if the Commissioner determines there is a statistical disparity between the

percentage of purchasing from businesses owned by group members and the representation of businesses owned by group members among businesses in the relevant market area in the purchasing category.

3. In addition, an individual business may be included as a targeted group business if the Commissioner determines inclusion is necessary to remedy discrimination against the owner based on race, gender, or substantial physical disability in attempting to operate a business that could provide goods or service to public agencies.

4. The Department of Administration contracted for an independent study of the purchasing and contracting practices of the Minnesota Departments of Administration and Transportation, the Metropolitan Council, the Metropolitan Airports Commission, and the Metropolitan Mosquito Control District (“Governmental Units”).

5. The independent study resulted in a series of reports, entitled 2017 Minnesota Joint Disparity Study; Minnesota Department of Administration; 2017 Minnesota Joint Disparity Study; Minnesota Department of Transportation; 2017 Minnesota Joint Disparity Study; Metropolitan Council; 2017 Minnesota Joint Disparity Study; Metropolitan Airports Commission; and 2017 Minnesota Joint Disparity Study; Metropolitan Mosquito Control District (“the Studies”), dated March 13, 2018, and submitted to the Minnesota legislature on June 11, 2018, the contents and appendices of which are hereby incorporated by reference, to determine whether a statistical disparities exist between the Governmental Units’ purchasing from or contracting with businesses owned by specific minority groups or women and the representation of those businesses within all businesses in the state purchasing category.

6. The Studies found that the Governmental Units engage in outreach and training programs, monitor utilization of minority- and women-owned businesses, encourage small business participation in contracting, follow and require contractors to follow state and federal anti-discrimination laws in part by including the requirements in contract language, use standardized contract language and divide contracts into smaller units.

7. The Studies quantitatively evaluated the purchasing and contracting practices of the Governmental Units, in key purchasing areas by analyzing the Governmental Units' payment data from July 2011 through June 2016, and by reviewing and analyzing purchasing and contracting files of the Governmental Units.

8. The key purchasing areas that the Studies addressed were the construction prime contracting and subcontracting, professional services, other services, and goods and supplies industries.

9. The Studies compared the percentage of utilized contractors to those that were available to perform the work in the relevant market areas.

10. The Studies considered a firm available if it had the capacity to have worked on an agency's contracts and has been willing to do so.

11. The Studies found that substantial disparities exist in utilization of businesses owned by African Americans, Asian Americans, Hispanic Americans, Native Americans and women.

12. The Studies included an analysis of anecdotes reported by minority and women business owners that alleged both active and passive participation in discriminatory practices in the marketplace by the Governmental Units which impeded minority and women business owners from the opportunities generated by the Governmental Units.

13. The Studies included an analysis of purchasing and contracting from businesses owned by persons with a substantial physical disability.

14. The Studies found that the Governmental Units have a rational basis for programs that include ownership by persons with a substantial physical disability.

CONCLUSIONS

1. Under decisions of the United States Supreme Court, significant disparity between the utilization of women and minorities and their availability to perform in the relevant market area is evidence of discrimination. Anecdotal evidence of discrimination is also relevant evidence of discrimination under the Supreme Court's decisions.

2. Under the Supreme Court's decision in City of Richmond v. Croson, 488 U.S. 469, 109 S. Ct. 706 (1989), government may take action to remediate a pattern or practice of discrimination where the discrimination is shown by significant statistical disparity and the means used to remediate the discrimination are narrowly tailored.

3. Substantial disparities exist in the Governmental Units' utilization of businesses owned and operated by specified minority groups and women in comparison to their availability for purchasing and contracting in all categories examined.

4. Disparities exist in the state's utilization of businesses owned and operated by persons with a substantial physical disability.

5. The state has considered and undertaken race-neutral measures to increase minority business participation in state contracting.

NOW, THEREFORE, IT IS ORDERED THAT

1. Small businesses owned and operated by women, by minority groups as defined in Minn. Rules Chapter 1230, or by persons with a substantial physical disability are designated as Targeted Group businesses for purposes of the Governmental Units' purchasing and contracting.

2. This designation applies to the Governmental Units and all state agencies subject to Minn. Stat. § 16C.

3. This designation is valid until amended by further order.

June 11, 2018

Date



Matt Massman
Commissioner of Administration