



Illinois Department of Transportation

Office of the Secretary
2300 South Dirksen Parkway / Springfield, Illinois / 62764
Telephone 217/782-5597

January 31, 2012

Honorable John J. Cullerton
President of the Senate
327 Capitol Building
Springfield, IL 62706

Re: Target Market Annual Report

Dear President Cullerton:

As required by P.A. 097-228, the Department of Transportation jointly with the Chief Procurement Officer is providing an annual report on the Target Market Program. This report outlines the progress the department has made to establish and implement the Target Market initiatives.

If you have any questions or need further information regarding this or any other matter, please do not hesitate to contact us.

Sincerely,

Handwritten signature of Ann L. Schneider in black ink.

Ann L. Schneider
Secretary

Handwritten signature of Bill Grunloh in black ink.

Bill Grunloh
Chief Procurement Officer

Enclosure



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Report to the Illinois General Assembly on Senate Bill 1923, P.A. 097- 0228

The Illinois General Assembly enacted Senate Bill 1923 and on July 28, 2011 the Governor signed into law Public Act 097-0228, establishing the Target Market Program to remedy particular incidents and patterns of egregious race or gender discrimination in Transportation related contracts. The Illinois Department of Transportation (IDOT) and the Chief Procurement Officer do hereby jointly submit this annual report regarding the progress towards identifying evidentiary inquiries or studies to establish a compelling interest in remedying egregious discrimination.

The legislation directs the Chief Procurement Office, in consultation with the department, to promulgate rules necessary to administer the Target Market Program. These rules were prepared, submitted and approved by the Joint Committee on Administrative Rules (JCAR) on December 23, 2011, presented to the Procurement Policy Board, and are now in place.

The department has been aggressively investigating to determine evidence of egregious discrimination.

- Public Hearings were held in the following locations in an effort to start gathering public comment:

<u>Date</u>	<u>Location</u>
December 14, 2011	Woodson Regional Library 9525 South Halsted Chicago, IL
December 15, 2011	The Gateway Building 200 Northeast Water Street Peoria, IL
December 16, 2011	East St. Louis Public Library 5300 State Street East St. Louis, IL

- During each hearing, the testimony provided was documented and compiled into a "Target Market Public Hearings" report published on December 30, 2011.
- During the public hearing period and the weeks following, minority-owned and female-owned firms were encouraged to submit their evidence of egregious

discrimination in writing or via a designated phone service.

- The Illinois Department of Transportation and the Illinois Tollway Disadvantaged Business Enterprises published the *Illinois Department of Transportation Disparity Study* and published the *Illinois State Toll Highway Authority Disparity Study* in September 2011. The two disparity studies were conducted by a nationally well respected independent firm to determine the level of minority-owned and female-owned business enterprise participation on the respective contracts of the authority and the department for a period between January 1, 2006 to December 31, 2008. The department is utilizing results of these disparity studies to further analyze contractual history in determining potential evidence of discrimination.

The department is resolutely compiling and analyzing this data to determine where, if any, egregious race or gender discrimination has occurred. Should a determination be made identifying strong evidence of the need for a narrowly tailored target market, the department will implement appropriate remedies as outlined in the JCAR rules, Target Market Remedial Actions Section 6.830 (enclosed).

After the analysis and review is complete, the department, with concurrence from the Chief Procurement Officer, will assess the evidence. If a strong evidentiary basis demonstrates that the department has a compelling interest in remedying discrimination, the Chief Procurement Officer, in consultation with the department, may establish and implement a target market program. A target market program may take several forms, depending on the identified and needed remediation. The department and the Chief Procurement Officer will jointly submit a supplemental report of evidence and the proposed remedial actions to the General Assembly within 60 days of this filing.

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

**TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY
MANAGEMENT**
SUBTITLE A: PROCUREMENT AND CONTRACT PROVISIONS
**CHAPTER III: CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF
TRANSPORTATION**
**PART 6 CHIEF PROCUREMENT OFFICER FOR THE DEPARTMENT OF
TRANSPORTATION - CONTRACT PROCUREMENT**
SECTION 6.830 TARGET MARKET REMEDIAL ACTIONS

Section 6.830 Target Market Remedial Actions

- a) Narrow Tailoring (See Northern Contracting, Inc. v. Illinois Department of Transportation, 473 F.3d 715 (7th Cir. 2007))
The procurement of contracts by the CPO to complete transportation construction projects undertaken by the Department is adversely affected by the presence of discrimination. In addition to goal-oriented remedial programs, target market remedial actions will be implemented to eliminate the effects of discrimination in the performance of transportation construction projects. The target market remedial measures selected to remedy egregious discrimination will be narrowly tailored to the evidence relied on to support the action. The selection will specify whether, and to what extent, the remedial measure is subject to geographic market areas and/or construction market areas based on the evidence. In addition, the selection will establish specific, definite duration limitations based on the evidence. Target market remedial measures may include, but are not limited to, the following actions selected on the basis of the evidence as the most narrowly appropriate to remedy the identified discrimination:
- 1) Contract Formation Actions
 - A) The Department, in consultation with the CPO, may designate specific contract work as reserved for performance solely by minority-owned businesses, female-owned businesses or Disadvantaged Business Enterprises, as determined by the funding sources for the contract. This action removes some or all discretion from the bidding contractors or consultants as to the work to be performed by eligible minority, female or disadvantaged participants in the context of existing goal-oriented remedial programs. The contract and procurement documents will be drafted and advertised to require the contractor or consultant to make a good faith effort (see, e.g., 49 CFR 26.53) to have the identified reserved work performed by eligible minority, female or disadvantaged business participants.

B) The Department, in consultation with the CPO, may implement contract formation and bidding procedures designed to encourage and facilitate bidding and offers by minority-owned, female-owned and disadvantaged businesses. This action includes, but is not limited to, dividing procurements into units conducive to eligible business participation, scheduling contract lettings at alternative locations conducive to eligible business participation, providing for bidding documentation and submission procedures conducive to eligible business participation and removal of bid bond requirements to induce eligible business participation. (See Section 2705-600(2) of the Law.)

2) Contract Goal Actions

The Department, in consultation with the CPO, may advertise contracts for award or selection with separate minority-owned and female-owned business participation goals in the context of existing goal-oriented remedial programs. This action may provide for either minority-owned or female-owned business utilization goals, or both, applicable to a particular contract or contracts.

3) Contract Incentive Actions

The Department, in consultation with the CPO, may establish bid incentives for achievement of minority-owned, female-owned or Disadvantaged Business Enterprises goals advertised in contracts for award in the context of existing goal-oriented remedial programs. This action may provide for an incentive advertised as applicable to eligible bidders making the highest commitment to eligible business participation that would reduce the price bid for purposes of price comparison and determination of the lowest bid price for purposes of award.

4) Contract Set-Aside Actions

The Department, in consultation with the CPO, may advertise contracts for award or selection set-aside for minority-owned, female-owned or disadvantaged business enterprises exclusively. This action establishes a sheltered procurement process open only to eligible businesses determined to be responsible contractors in accordance with this Part.

b) Minimum Participation Availability

No contract will be eligible for inclusion in any target market action unless the Department, in consultation with the CPO, determines that there are at least 3 eligible businesses interested in participating in the contract. The determination will be based on the DBE certifications and other attendant factors. (See Section 2705-600(3) of the Law.)

(Source: Added at 36 Ill. Reg. 230, effective December 21, 2011)