



Illinois Department of Transportation

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

January 31, 2014

Honorable John T. 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 submitting the annual report outlining the efforts taken by the Department to continue identifying and remedying incidents of egregious discrimination in geographic or construction market areas around the state through implementation of the Target Market Program.

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 cursive.

Ann L. Schneider
Secretary

Handwritten signature of Bill Grunloh in cursive.

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 (“the Act”), establishing a Target Market Program to provide a remedial plan to address particular incidents and patterns of egregious race or gender discrimination in transportation related contracts. The Illinois Department of Transportation (“Department”) and the Chief Procurement Officer (“CPO”) do hereby jointly submit this annual report regarding the progress towards evidentiary inquiries and studies that may establish the Target Market Program.

The Department recognized the potential for localized incidents of underutilization and discrimination through statistical and anecdotal evidence from the most recent Department Statewide Disparity Study published in August of 2011. As a result, and in conjunction with Public Act 097-0228, the Department has conducted geographically focused disparity studies to examine whether particular incidents and patterns of egregious race or gender discrimination persist.

1. Target Market Program Overview

As stated above, under the Act, the Department must review evidence of discrimination related to transportation construction projects. Evidence may include the utilization, availability, and disparities in the rates at which minority-owned and female-owned firms perform work on Department construction projects. Additionally, other quantitative and qualitative information or data may be analyzed.

Upon a review of the evidence, the Department may find that there is a strong basis in evidence that it has a compelling interest in remedying the identified discrimination against a specific group, race, or gender. The CPO must concur in the findings in order to exercise his authority to establish and implement a Target Market Program.

The Target Market Program is a narrowly tailored remedial plan to address the specific findings of egregious discrimination and is subject to a public hearing where stakeholders may provide comments. The Target Market Program is limited to state-funded contracts only and, therefore, limits the applicable pool of contracts.

2. Recap of Significant Progress Achieved

As part of its due diligence, the Department considered both documented and potential disparities in the context of highway construction contracting. As part of that undertaking, the Department aggressively investigated whether sufficient evidence of egregious discrimination existed. Specifically, after reviewing historical documentation in the Department's District 8 and Metro-East area, the Department and the CPO recognized the need to conduct a further investigation and requested Mason Tillman Associates, Ltd., to update statistical information specific to this area in order to determine whether the conditions of egregious discrimination continue to exist. The eleven counties in District 8 are Bond, Calhoun, Greene, Jersey, Madison, Marion, Monroe, Randolph, St. Clair, and Washington.

The disparity study, which was limited to District 8 construction contracts awarded in 2009 and 2010, provided the factual predicate to support a Target Market Program with a race conscious remedy. The statistical data was further bolstered by anecdotal evidence gathered from five sources:

- IDOT Target Market Program Public Hearing, 2011;
- IDOT Dual Goal Waiver Public Hearings, 2009;
- IDOT District 8 Disparity Study Anecdotal Analysis Focus Groups, 2009;
- IDOT Disadvantaged Business Enterprise ("DBE") Disparity Study Anecdotal Analysis, 2009; and
- IDOT DBE Public Hearing, 2005

Several barriers were identified in the District 8 study. Discrimination based on race and gender, harassment on work sites, bid shopping, and late payments are only a few of the barriers demonstrated in the study.

In sum, the findings were presented to the Department in March 2012, where the Mason Tillman Associates, Ltd. Study of District 8 found: "There was a statistical significant disparity found in construction subcontracts for African Americans, Hispanic Americans, and Minority Business Enterprises."

Subsequently, the Department conducted another public hearing on April 28, 2012 at East St. Louis City Hall to collect comments from minority, female, and general contractor groups, community organizations, and other interested parties. The transcript of this hearing was included as Attachment A of the report submitted to the General Assembly on January 31, 2013.

Ultimately, the Department submitted a letter of findings and on May 1, 2012 received a letter of concurrence from the CPO to proceed with a Target Market Special Letting in District 8. This letting was advertised on January 18, 2013 with a letting date of February 15, 2013.

3. District 8 Target Market Special Letting

Recap of 2012

The table below summarizes the results of the June 29, 2012 Target Market Special Letting which contained a total of ten advertised projects for a program amount of \$1,913,000. The Department was disappointed in the Target Market Special Letting results because only five projects were awarded to minority firms for a total amount of \$580,278.81, as there were no bids submitted on all four landscaping projects located in St. Clair and one bid was ultimately rejected.

The \$250,000 landscaping project (highlighted in yellow below) was re-bundled into the original Mississippi River Bridge contract from the April 27, 2012 letting, as further delay would have affected the overall progress of the project. Additionally, the Department decided to re-let three of the landscaping projects (items 1, 2 and 10) on a subsequently scheduled Target Market Special Letting held on February 15, 2013.

June 29, 2012 Target Market Results

	County	Description	Ethnicity	Program Amount	Award Amount
1	St. Clair	Landscaping	---	\$200,000	No Bid
2	St. Clair	Landscaping	---	\$170,000	No Bid
3	St. Clair	Landscaping	---	\$250,000	No Bid
4	Marion	Bridge Deck Sealing	Asian Pacific	\$224,000	\$109,979.28
5	Clinton	Bridge Deck Sealing	Hispanic	\$274,000	\$130,059.47
6	Madison	Patching	African American	\$200,000	\$277,961.40
7	Madison- Bond	Grouting & Sealing	---	\$250,000	Rejected
8	Madison	Demolition	Hispanic	\$100,000	\$46,506.60
9	Madison	Demolition	Native American	\$80,000	\$15,772.06
10	St. Clair	Landscaping	---	\$165,000	No Bid
			Total	\$1,913,000	\$580,278.81

Progress in 2013

In an effort to maximize participation and positive letting results, an informational Target Market meeting was held on February 4, 2013 at the Department's District 8 Office in Collinsville. The meeting was attended by a diverse representation of firms -- seven African American firms and two Hispanic firms. The February 15, 2013 Target Market Special Letting yielded significant results as bids were received on all seven advertised Target Market projects including the previous landscaping items that received no bids the prior year on June 29, 2012. A total of \$1,078,817.29 was awarded to three African American firms and two Hispanic firms, thus nearly doubling the results of the prior Target Market Special Letting. A summary of the results of the letting are shown in the table below:

February 15, 2013 Target Market Results

	County	Description	Ethnicity	Program Amount	Award Amount
1	Madison	Deck Sealing	African American	\$175,000.00	\$72,081.40
2	St. Clair	Landscaping	African American	\$200,000.00	\$159,457.00
3	St. Clair	Landscaping	African American	\$170,000.00	\$139,366.00
4	St. Clair	Landscaping	Hispanic	\$165,000.00	\$111,060.24
5	Randolph	Pavement Patching	African American	\$225,000.00	\$200,901.75
6	Madison	Grouting & Sealing	Hispanic	\$250,000.00	\$359,594.35
7	Madison	Demolition	Hispanic	\$30,000.00	\$26,355.55
				\$1,215,000.00	\$1,068,816.29

4. District 4 Disparity Study

The Department requested Mason Tillman Associates, Ltd. to conduct a second geographical specific disparity study in District 4, the Peoria area, to determine if egregious discrimination exists. In undertaking this study, the Department provided Mason Tillman Associates, Ltd. with prime and subcontractor data, contract information, utilization of DBE firms on IDOT projects, as well as the December 2011 public hearing transcript for Peoria and the public comments received from the Department's 2012 DBE Goal Setting Document.

The data has been analyzed and the anecdotal evidence has been reviewed by Mason Tillman Associates, Ltd. and the Department. The Disparity Study has been completed and it shows evidence of egregious discrimination. As a requirement of the Target Market Program, within thirty (30) days of the CPO's concurrence in the new findings, the Department will hold a public hearing in District 4 for minority, female and general contractors, contracting organizations, community organizations, and other interested parties.

All participants will have an opportunity to provide comments before, during, and for a period of time after the hearing. Within fourteen (14) calendar days following the public hearing, and after consideration of the comments provided by the public, the CPO, in consultation with the Department, will make a written determination to either implement a narrowly tailored target market remedial action or discontinue further action.

5. Looking Forward: 2014

The Target Market Program and rules provide a variety of remedial actions when a finding of egregious discrimination is identified. It is not merely a contract set-aside program, rather, it is a race-conscious¹ contracting program that provides opportunities for incentives, dual goals, and targeted solicitation. Therefore, identifying projects is entirely dependent on the remedial action chosen by the CPO and the Department.

Over the last two years, the Department has tried set-aside programs for minority owned firms in District 8. Due to the ending of projects associated with the New Mississippi

¹ "Race conscious" in this context means a program that is focused specifically on assisting only eligible DBE firms, including women-owned firms.

Bridge, appropriate projects that meet the set-aside criteria are somewhat scarce. As required by the statute, at least three eligible firms must be available to participate in the program.

Additionally, while prequalification and bid bond requirements may be waived, the law requires public construction bonds on projects. Therefore, in light of the above constraints in selecting appropriate projects for a Target Market letting, the Department and CPO are examining the success of these lettings and whether alternative action should be taken to address the findings of the District 8 disparity study.

The final disparity study for District 4 has recently been completed. Accordingly, the findings will be presented to the CPO for concurrence and his recommendation for remedial action. The Department will diligently review all projects in advance of each Department letting to determine if there are appropriate state-funded projects to be placed on a Target Market Special Letting, in the event this type of action is set forth as an appropriate remedy.

6. Other Non-Target Market Efforts

Despite vigorous efforts by the Department to address discrimination in construction contracting, the recently completed studies demonstrate that disparities continue to persist in certain geographic and contracting markets. The Department's race and gender-neutral programs discussed below are intended to supplement the Target Market Program:

➤ *Disadvantaged Business Revolving Loan Program*

In accordance with the Target Market Program, the Department held hearings to identify first-hand accounts of discrimination. A repeated concern was a lack of access to bonding and financing. Authorized by 20 ILCS 2705/2705-610, the Department recently adopted rules (92 Ill. Adm. Code 5) and implemented the DBE Revolving Loan Program to specifically address this concern. The DBE Revolving Loan Program provides for assistance to DBEs that are ready, willing, and able to participate in Department construction contracts with project financing costs through the availability of low-interest lines of credit.

➤ *Mentor Protégé Programs*

Gaining project experience was also an issue raised during the hearings. Therefore, the Department implemented Mentor-Protégé Programs for construction and consultant engineering services to enhance the capabilities of DBEs to perform prime contracts and subcontracts, and thereby increase the utilization of available DBEs. The program was created to provide developmental assistance to DBEs and enhance the protégé's business and technical capabilities to do more complex work.

➤ *Small Business Initiatives*

Bidding as primes was another issue raised. The Department submitted a Small Business Program Element to the Federal Highway Administration as an amendment to its DBE Program pursuant to 49 CFR Section 26.39. The amendment included a proposal for a

race-neutral small business set-aside program for prime contracts called Small Business Initiatives (“SBI”). The Department recently received approval from the United States Department of Transportation to apply the SBI program to federal-aid contracts and is working to implement the program in 2014.

➤ ***Other Activities to Address Discrimination***

In addition to the above race and gender-neutral programs, the Department continues to take steps to improve opportunities and services for DBEs, which include the following:

- DBE Resource Centers provide management and technical supportive services assistance on a statewide basis.
- Monthly *Diversity Matters* newsletter to keep small businesses informed of all Department programs.
- Department website revisions to create a portal to facilitate access to all diversity programs, including DBEs, which is available at: <http://www.diversity.dot.illinois.gov/>.
- The Prequalification Enhancement Committee met with stakeholders to eradicate perceived barriers in the prequalification processes for construction and consulting for small businesses. During the meetings, several key issues and concerns were raised about prequalification requirements. As a result, the Department is conducting an in depth analysis of the requirements for each prequalification category. The ultimate goal is to level the playing field and increase participation in prequalification categories especially where few small businesses currently participate.
- Increasing the minority representation on the Department’s Engineering Selection Committee.
- IDOT will hold its annual DBE conference, Today’s Challenge Tomorrow’s Reward (“TCTR”), on February 25-26, 2014, in Springfield. TCTR provides a forum to provide timely construction industry information networking opportunities to assist small and disadvantaged businesses. For more information, please see: <http://www.dot.il.gov/sbe/TCTR/index.html>.

All the above existing Departmental programs are administered by the Office of Business and Workforce Diversity and Division of Highways. The Department continues to explore other means to provide for increased opportunities for the DBE community, as mandated by the federal regulations.

7. Summary

The Department continues to pursue opportunities to diversify its business opportunities by fostering minority and female owned business inclusion in all modes of transportation.