



EXECUTIVE ORDER

2018-06

**EXECUTIVE ORDER TO ENSURE REPRESENTATIVE CONTRACTING IN STATE
PROCUREMENT**

WHEREAS, the State of Illinois' diverse population is the bedrock of its character, a foundation of a vibrant community, and is a pillar strengthening its economy; and

WHEREAS, in the face of national and international competition and to combat outmigration caused by decades of fiscal mismanagement of State government, Illinois must send a message that it is "open for business"; and

WHEREAS, being "open for business" means being open for all business, and

WHEREAS, it is the public policy of the State that businesses owned by minorities, women, and persons with disabilities should participate equitably and contract with the State through its procurement processes; and

WHEREAS, the Business Enterprise Program ("BEP"), which exists to foster an inclusive and competitive business environment, commissioned a Disparity and Availability Study in 2015 that found that disparities exist between the availability of minority-owned and women-owned businesses and their utilization on State contracts and subcontracts; and

WHEREAS, the 2015 Disparity and Availability Study and BEP's most recent annual reports have identified ongoing disparities that are especially significant for African-American-owned businesses; and

WHEREAS, as of 2013, African-Americans represent 9.5% of the ownership of total Illinois businesses, but the total value of State contracts awarded to African American-owned businesses by the State of Illinois was less than 1% of total spending; and

WHEREAS, Public Act 099-0451 created the Fair Practices in Contracting Task Force ("Task Force"), in 2016, to focus on African-American business participation in State procurement and to issue recommendations, based on researched best practices, for alleviating disparities in contract awards; and

WHEREAS, the Task Force has developed several policy recommendations to strengthen reporting and oversight by BEP of State agency contracting and to ensure concrete metrics are built into the State's procurement processes; and

WHEREAS, although the Task Force sunsets and Public Act 099-0451 is repealed on January 2, 2019, the Task Force's research and recommendations reveal there is a great deal more work that must be done to reform State procurement; and

WHEREAS, ongoing commitment to reviewing and correcting for exclusive contracting patterns is necessary to encourage full participation by business owners of diverse backgrounds who have historically faced unique barriers to growth in our economy, and

THEREFORE, I, Bruce Rauner, Governor of Illinois, by virtue of the executive authority vested in me by Section 8 of Article V of the Constitution of the State of Illinois, do hereby order as follows:

I. DEFINITIONS

As used in this Executive Order:

“BEP” means the State of Illinois Business Enterprise Program.

“CMS” means the Illinois Department of Central Management Services.

“Commission” means the Illinois Commission on Fair Contracting.

“Contract” or “contracts” has the meaning provided by Section 2 of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575/2).

“Disparity Study” means the State of Illinois 2015 Disparity and Availability Study.

“State agency” means any agency under the jurisdiction of the Governor whose procurement contracting is regulated by Chief Procurement Officer for General Services.

“Task Force” means the Fair Practices in Contracting Task Force, established by Public Act 099-0451.

II. ADOPTION OF FAIR PRACTICES IN CONTRACTING REFORMS

The Task Force, as part of its charge to thoroughly survey African-American-owned business participation in State procurement and to research solutions and methods to address the disparity in procurement awards, has issued the following recommendations:

1. That the State of Illinois declare that addressing the underrepresentation of African-American vendors in State contract awards is a compelling interest of the State, and to further that interest, a major policy goal of the BEP program will be to focus efforts on those communities that are most underrepresented in contract awards, including African-American-owned businesses, as identified in the BEP annual report and the Disparity Study;
2. That BEP outreach activities be allocated towards this major policy goal and that State agency contracts should be evaluated based on their achievement in engaging underrepresented communities;
3. That if a contract is deemed by the BEP secretary and the Director of CMS to be non-compliant with the goals and policies of the BEP program, that the contracting agency must cancel the contract;
4. That all State agency contracts above \$100,000 be submitted to BEP for goal setting. Goal setting is the process for placing BEP goals on State contracts. This recommendation would lower the goal setting threshold, which currently only applies to contracts above \$250,000;
5. That a standing Commission be created to continue the work of the Task Force and to conduct quarterly performance reviews of State agency performance in contracting with African-American-owned businesses and to issue ongoing annual reports on African-American disparity ratios; and
6. That CMS issue a guidance that engagement with BEP contractors and subcontractors and support of the goals of the BEP program and the Fair Contracting Task Force shall be included in the job descriptions of State agency management and contracting personnel and be a factor in performance evaluations of State agency management and contracting personnel.

This Executive Order adopts the above recommendations and State agencies are hereby ordered to comply with these recommendations.

Immediately of the effective date of this Executive Order, State agencies shall submit all pending and future contracts above \$100,000 to BEP for goal setting.

Within 30 days of the effective date of this Executive Order, CMS shall issue guidance to each State agency to identify appropriate management and contracting personnel and to amend, through

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appropriate legal processes, their position descriptions to include an articulation of the following requirement: engagement with Business Enterprise Program (BEP) contractors and subcontractors and support for the goals of the BEP program and the Fair Contracting Task Force is required of the position.

Within 60 days of the effective date of this Executive Order, CMS shall draft and submit to BEP Council for approval: (1) a guidance to State agencies to ensure compliance with the BEP program on contracts; and (2) a review of contractual language regarding cancelation of contracts deemed not to be compliant with the BEP program and, if necessary, proposed recommended changes to contractual boilerplate language for future contracts.

Within 120 days of the effective date of this Executive Order, BEP shall issue an outreach strategy that addresses the underrepresentation of African-American-owned businesses in State contracts. This outreach strategy shall be shared with State agency heads. Within 120 days of the effective date of this Executive Order, BEP shall also develop a quarterly evaluation metric to measure State agency achievement in engaging underrepresented communities.

Nothing in this section shall be deemed an impairment of any existing contractual right of any party.

III. DECLARATION OF THE POLICY OF THE STATE OF ILLINOIS

Pursuant to Section II (1), it is declared the policy of the State of Illinois that addressing the underrepresentation of African-American vendors in State contract awards is a compelling interest of the State. To further this interest, a major policy goal of the BEP program shall be to focus procurement and contracting efforts on those communities identified in the Disparity Study and in BEP's most recent annual report to be the most underrepresented in contract awards. This major policy goal includes addressing disparities affecting African-American-owned businesses. BEP shall allocate outreach efforts pursuant to this major policy goal. State agency contracts shall be evaluated based on their achievement in engaging underrepresented communities pursuant to this major policy goal.

IV. CREATION OF ILLINOIS COMMISSION ON FAIR CONTRACTING

Pursuant to Section II (5), there is hereby created a permanent Illinois Commission on Fair Contracting. The purpose of the Commission is the ongoing study of African-American-owned businesses and their participation in State contracting. The Commission shall be an advisory body that will not make binding recommendations or determinations. The Commission shall:

1. Issue regularly proposed solutions to systemic causes in minority, including African-American, participation in State procurements;
2. Review on a quarterly basis State agency performance as it relates to African-American businesses and, to increase transparency surrounding State agency compliance, report results to the African-American-owned business community;
3. Review State agency plans, and issue recommendations to State agencies as warranted, on the eradication of historic disparities and barriers to State contracting and receipt of State funds by African-American-owned businesses;
4. Receive from each State agency its plan and goals on how to eradicate historic disparities and barriers that prevent fairness, equality, and parity for African-American-owned businesses, and review and provide recommendations to State agencies on these plans;
5. Recommend performance incentives to State agencies that meet or exceed their planned goals and publish, at least annually, a list of those agencies that fail to meet their planned goals;
6. Hold meetings and accept public comment from representatives of African-American-owned businesses on their interaction with State agencies and experiences in seeking to overcome historic barriers to participation in State procurement and issue recommendations to State agencies in reliance on public comments and other information;
7. Conduct inquiries to State agencies to identify and evaluate existing administrative, operational, and personnel policies and procedures as they relate to African-American-owned business participation in State procurements; and
8. Issue annually a report to the Governor and the General Assembly, which shall include data on the African-American-owned business disparity ratio in Illinois and proposed

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solutions to alleviate disparities in procurement awards to African-American-owned businesses.

Within 180 days, in coordination with the Commission, the BEP Council, and CMS, all State agencies shall submit to the Commission a proposed plan on how each intends to work to eradicate historic disparities and barriers to State contracting and receipt of State funds by African-American-owned businesses. In its reporting, the Commission shall not disclose any confidential financial or trade secret protected information furnished to the State under a claim of confidentiality.

The Commission shall consist of the following members:

1. Four members appointed by the Governor, three of whom must be from the Department of Central Management Services, the Capitol Development Board, the Department of Transportation, the Department of Children and Family Services, or the Department of Health and Family Services, and one of whom must be a representative of the BEP Council;
2. Four members of the public, representing African-American-owned businesses, appointed by the Governor;
3. One member of the House of Representatives appointed by the Speaker of the House of Representatives;
4. One member of the House of Representatives, appointed by the Minority Leader of the House of Representatives;
5. One member of the Senate appointed by the President of the Senate; and
6. One member of the Senate appointed by the Minority Leader of the Senate.

The chairperson or co-chairpersons of the Commission shall be designated by the Governor. The Department of Central Management Services shall assist the Commission and provide administrative support to the Commission, including but not limited to providing an Ethics Officer to the Commission, responding to Freedom of Information act requests on behalf of the Commission, and assisting the Commission in complying with State ethics laws.

The Commission shall meet at least quarterly and annually publish a report of its findings to the Governor, the General Assembly, appropriate committees, and the public through the support of CMS. The Commission and its meetings are subject to the Open Meetings Act (5 ILCS 120/). The Commission may adopt whatever legally authorized policies and procedures necessary to carry out its duties and functions.

This section is effective January 3, 2019.

V. SAVINGS CLAUSE

This Executive Order does not contravene, and shall not be construed to contravene, any federal law, State statute, or collective bargaining agreement.

VI. PRIOR EXECUTIVE ORDERS

This Executive Order supersedes any contrary provision of any other prior Executive Order.

VII. SEVERABILITY CLAUSE

If any part of this Executive Order is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.

VIII. EFFECTIVE DATE

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Except for section IV, this Executive Order shall take effect immediately upon filing with the Secretary of State. Section IV of this Executive Order shall take effect on January 3, 2019.



Bruce Rainer, Governor

Issued by Governor: May 10, 2018
Filed with Secretary of State: May 10, 2018

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