

# **EXECUTIVE ORDER #33**

## **Enhancing Opportunities**

### **for Small, Women- and Minority-owned Businesses**

#### **Importance of the Issue**

It is imperative that the Commonwealth of Virginia maximize the participation of its citizens in the vast array of commercial opportunities in state procurement. The Commonwealth's historical record in buying goods and services from small, women-owned and minority-owned (SWaM) businesses must be improved. This record as documented in "A Procurement Disparity Study of the Commonwealth of Virginia" January 12, 2004 final report, requires that Virginia develop new approaches in creating a system of fair contracting. The firm MGT of America, Inc., which conducted the disparity study, found that the Commonwealth's spending with minority business enterprises as a percentage of total spending was the lowest recorded in over 100 of their studies. For Virginia to remain competitive, we must assure that all businesses and owners have an equal opportunity to share in state procurement.

#### **Initiatives**

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and the Code of Virginia, I hereby direct my cabinet secretaries and all executive branch entities to implement and advance the following:

It shall be the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. The Department of Minority Business Enterprise ("DMBE"), in consultation with executive branch entities and institutions with procurement policy responsibilities, shall develop a race- and gender-neutral Goal Setting Program. The Program shall require small business goals in every agency's procurement plan.

For the purpose of this goal a "small business" is one of 250 or fewer employees, or gross receipts of \$10 million or less averaged over the previous three years. This shall include, but not be limited to, certified minority-owned and women-owned businesses that meet the small business definition.

DMBE, in consultation with executive branch entities and institutions with procurement authority shall develop a uniform, state-wide method for evaluating and monitoring SWaM participation plans in all state procurements. Each prime contractor shall include in its proposal(s)/bid(s) a SWaM participation component. Before final payment is made, the contractor must certify evidence satisfactory to the Commonwealth of compliance with the contract's SWaM Procurement Plan.

Executive branch entities and institutions with procurement responsibilities shall implement processes for producing SWaM subcontracting data as established by DMBE in consultation with the Department of General Services and the Virginia Information Technologies Agency. This subcontracting data must also include information on non-SWaM subcontractors performing on contracts over \$200,000.

DMBE, in consultation with executive branch entities and institutions with procurement policy responsibilities, shall formulate policies and procedures for the Commonwealth's small business set aside program and implement small business enhancement tools, including but not limited to, the unbundling of selected State contracts, increasing SWaM participation on small procurements under \$5,000, and the early posting of potential contract opportunities.

Agency heads, senior managers with procurement responsibility, procurement personnel, and end users with procurement P-Cards shall be evaluated on the attainment of SWaM goals as part of their annual and interim employee evaluations.

Executive branch entities and institutions with procurement responsibilities shall review practices, procedures and proposal evaluation criteria to identify and remove barriers or limitations to SWaM participation. A section on “barriers or limitations” shall be included in annual SWaM plans. SWaM plans shall be developed and submitted to DMBE and the appropriate cabinet secretary on September 1 of each fiscal year and shall include:

The designation of a SWaM champion to ensure nondiscrimination in the solicitation and awarding of contracts; Agency SWaM goals, and a statewide public information campaign to promote procurement opportunities and SWaM participation.

The Department of General Services, the Virginia Information Technologies Agency and executive branch entities and institutions shall actively recruit SWaM businesses to bid on statewide cooperative procurement agreements and/or contracts that are open for competition. DGS and VITA shall develop guidelines that promote greater representation of SWaM businesses on such contracts.

The Virginia Information Technologies Agency, Virginia Department of General Services, Virginia Department of Transportation and universities operating under management agreements shall develop pilot programs in conjunction with DMBE to increase opportunities for SWaM vendors to perform as prime contractors on Commonwealth projects.

The Department of Business Assistance, in conjunction with the Department of Minority Business Enterprise, Department of Planning and Budget, Virginia Department of Transportation and other executive branch entities as necessary, shall establish a Small Business Development Program and initiatives to enhance the development and to increase the number of small businesses in Virginia. Such efforts shall include, but not be limited to:

Access to capital, including contract financing and bonding support;

Management and technical assistance programs; and

Statewide mentor/protégé and/or joint venture programs.

VDOT and DGS shall develop guidelines for vertical and horizontal construction to be used by executive branch entities and institutions in making construction mobilization payments to businesses when reasonable and necessary to facilitate contract initiation.

The Interagency Advisory Council on Administrative Dispute Resolution in conjunction with DMBE, and the Virginia Department of General Services shall establish a SWaM contract mediation program. The mediation program shall offer dispute resolution alternatives for conflicts between executive branch entities or institutions and a small business in a contract situation.

The purchasing manuals, regulations and guidelines of all executive branch entities and institutions subject to the Virginia Public Procurement Act shall include SWaM purchasing regulations and/or guidelines.

These directives are not intended in any way to limit the application of additional creativity at the agency level. They are designed to promote economic justice and eliminate impediments to a more equitable procurement process. Each cabinet secretary shall evaluate the performance of their agencies in implementing these directives. Accordingly, DMBE, in cooperation with each cabinet secretary, shall provide quarterly reports to me regarding the Commonwealth’s progress in enhancing opportunities for Small, Women and Minority-owned businesses. The reports shall delineate the Commonwealth’s spending in detail by ethnicity, SWaM category, and agency.

Effective Date of the Order

This Executive Order rescinds the relevant provisions of Executive Order 28 (2006) issued by Governor Timothy M. Kaine, which continued Executive Order 103 (2005), issued by Governor Mark R. Warner. This Executive Order shall be effective upon its signing and shall remain in full force unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 10th day of August 2006.

**/s/ Timothy M. Kaine, Governor**

**Attest:**

**/s/ Secretary of the Commonwealth**