Memorandum to Presidents

Date: April 6, 1984

From: Office of the Chancellor

Subject: Amendment to Policy on Minority Business Enterprises

To: Presidents, State-operated Campuses

In July, a Memorandum to Presidents, Vol. 83, No. 8, was sent to you which defined University policy and obligations under Executive Order 117. On August 3, 1983, Governor Cuomo issued Executive Order 21 (copy enclosed), which supersedes Executive Order 117. The major difference is that Executive Order 21 includes women-owned business enterprises.

Consequently, the University policy statement is amended as follows:

It is the policy of the State University of New York to take affirmative action to ensure that minority business enterprises, i.e., independent business concerns which are at least 51 percent owned and controlled by minority group members (citizens of the United States or permanent resident aliens who are Black, Hispanic, Asian, or American Indian), and women-owned business enterprises, i.e., independent business concerns which are at least 51 percent owned and controlled by women who are citizens of the United States or permanent resident aliens, are given the opportunity to demonstrate their ability to provide the University with goods and services at competitive prices.

The University statement for inclusion in all campus requests for quotations, bid proposals, and contract documents is amended as follows:

It is the policy of the State University of New York to take affirmative action to ensure that minority and women-owned business enterprises are given the opportunity to demonstrate their ability to provide the University with goods and services at competitive prices.
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Please amend all campus documents to reflect these changes.

Thank you for your cooperation in our University-wide efforts in behalf of minority and women-owned businesses.

Donald D. O'Dowd
Executive Vice Chancellor

Enc.

cc: Business Officers
   Affirmative Action Officers

This Memorandum addressed to:
   Presidents, State-operated Campuses

Copies for information only to:
   Presidents, Community Colleges
   Deans, Statutory Colleges
   President Coll
   Vice Provost Spencer
EXECUTIVE ORDER

PRESCRIBING ARRANGEMENTS FOR ESTABLISHING A STATE PROGRAM FOR CONTRACT COMPLIANCE AND MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE

WHEREAS, the opportunity for full participation in our free enterprise system by traditionally socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our State economy; and

WHEREAS, in pursuit of economic opportunity for all persons, it is the policy of the State of New York to foster and promote the employment of minority group members and women and the development of minority and women-owned business enterprises and to develop a program designed to address their unique needs and circumstances; and

WHEREAS, important methods of directing our efforts are (a) to establish an office to guide and oversee a contract compliance and minority and women-owned business enterprise program; (b) to specify the authority of the Commissioners of Commerce and General Services to implement programs in support of minority and women-owned business enterprises; (c) to provide additional technical and management assistance to minority and women-owned business enterprises; (d) to establish an Executive Committee on Minority and Women-Owned Business Development to provide assistance in coordinating the participation of all State departments, agencies and public authorities in an enhanced minority and women-owned business enterprise effort; and (e) to develop a process to insure that only bona fide minority and women-owned business enterprises benefit from the program provided pursuant to this Executive Order, and

WHEREAS, it is necessary to implement performance reporting systems to promote the employment of minority group members and women and the procurement of goods and services produced by minority and women-owned business enterprises;

NOW, THEREFORE, I, Mario M. Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby order as follows:


There is hereby created in the Executive Chamber an Office of Contract Compliance and Minority and Women-Owned Business Enterprise (the "Office"), which shall be responsible for guiding and overseeing the programs of all entities covered by this Order aimed at increasing opportunities for minority group members and women and minority and women entrepreneurs to participate in state construction and procurement programs. The Office will be headed by a director appointed by the Governor. The Director will be a member of the staff of the Executive Chamber and report directly to the Governor.
1. The Office shall:

(a) Establish procedures and guidelines to ensure that contractors undertake programs of affirmative action for the employment of minority group members and women, to the extent consistent with existing law. The procedure may require, to the extent consistent with existing law, the submission of an affirmative action program prior to the award of any contract, or at any time thereafter, and may require the submission of compliance reports relating to the operation and implementation of a contractor's affirmative action program.

(b) Develop a comprehensive State-wide plan and operational guidelines to promote minority and women-owned business enterprises and to assist them in obtaining a fair share of contracts for procurement of goods and services awarded by the State, including identification of barriers to minority and women-owned business enterprise development and investigation and evaluation of their effect on achieving the objectives of this Order.

(c) Establish regular performance reporting systems regarding implementation of programs designed to increase minority and women-owned business enterprise participation in procurement contracts by State departments, agencies and public authorities.

(d) Supervise the administration of the certification procedure established pursuant to subdivision (a) of Article 3 of this Order.

(e) Review existing State contracting procedures and make recommendations concerning amendments which would facilitate award of State contracts to minority and women-owned business enterprises.

(f) Initiate and promote the development of programs and coordinate the use of resources of State and local governments, business and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of minority and women-owned business enterprises, and act as a liaison in the coordination of the efforts of these groups with those of other federal, State and local departments and agencies charged with responsibility in this area.

(g) Annually review the reports of each State agency, department or public authority covered by this Order on its activities to promote minority and women-owned business enterprise development and identify the reporting entity's achievements, deficiencies, proposed solutions to problems, needs for external assistance and such other matters as may be appropriate or requested. The Office shall annually advise the Governor on the activities of the State agencies, departments and public authorities in effecting the provisions of this Order and may from time to time advise the Governor with respect to the actions and compliance with this Order of any departments, agencies or public authorities.

(h) Request reports and statements, as it deems necessary or desirable, from any department, agency or public authority, as appropriate, on their respective activities on behalf of minority and women-owned business enterprises pursuant to the provisions of this Order.

(i) Submit to the Governor, and the appropriate committees of the Legislature, by December 1 of each year, commencing 1983, a full report of its activities hereunder during the previous twelve months. Further, the Office shall, by September 30 of each year beginning in 1984, submit to the Governor its recommendations for legislation or other action it deems desirable to promote the purpose of this Order.

(j) Prepare a comprehensive report of the accomplishments of any contract compliance and minority and women-owned business enterprise program previously established, incorporating recommendations. The report shall be submitted to the Governor by January 1, 1984.

(k) Undertake such other activities as the Governor may require to fulfill the purposes of this Order.

(a) The Director shall make recommendations to the Commissioner of General Services concerning State contract and bid terms to insure compliance with the provisions of this Order.

(b) In implementing the provisions of this Order, the Director shall review and make recommendations concerning agency rules, regulations and procedures as well as contracting activities, consistent with the purpose and intent of this Order and applicable statutes.

(c) The Director may issue guidelines and require agency or contractor submissions to the Director in a form prescribed by the Director in order to effectuate the provisions of this Order.

(d) The Director shall require, to the extent authorized by law, that notice of specific employment opportunity responsibilities imposed by this Order shall be included in any bid specifications or requests for proposals for all State contracts for construction, procurement, design, and services.

(e) The Director shall conduct a study, with the assistance of the Director of the Women's Division and the Commissioner of Commerce and General Services, to determine the status of minority and women-owned business enterprises in State contracting activities and to make recommendations concerning methods to assist these enterprises, and appropriate goals.

Article 2. Function of the Commissioner of Commerce

The Commissioner of Commerce shall:

(a) Develop, collect, summarize and disseminate information that will be helpful to persons and organizations throughout the State in undertaking or promoting the establishment and successful operation of minority and women-owned business enterprises.

(b) Develop and make available to State agencies a registry of potential minority and women-owned business enterprises conducting or desiring to conduct business within the State.

(c) Assist State departments, agencies and public authorities in the development of programs to foster and promote minority and women-owned business enterprises and to assure participation of minority and women-owned business enterprises in State contracts.

Article 3. Function of the Commissioner of General Services

The Commissioner of General Services shall:

(a) Develop and begin implementation of a procedure of certification of minority and women-owned business enterprises which will utilize existing agency certification procedures. The Commissioner shall report to the Governor and the Director on the procedure developed, including an analysis of existing certification procedures of State departments, agencies and public authorities, and shall make recommendations as to the incorporation of such procedures into a State-wide certification program available to all agencies, departments and public authorities.

(b) Coordinate training of all procurement personnel of State departments, agencies and public authorities, emphasizing increased sensitivity and responsiveness to the unique needs and requirements of minority and women-owned business enterprises.

(c) With the assistance of the Director, conduct a coordinated review of all existing and proposed State training and technical assistance activities in direct support of the minority and women-owned business enterprise development program to assure consistency with the objectives of this Order.

(d) Render technical assistance to the Director and other State agencies respecting practicable methods and procedures designed to facilitate and increase the participation of minority and women-owned business enterprises in the procurement of goods and services by departments, agencies and public authorities.
Article 4. Establishment of the Governor's Executive Committee
on Minority and Women-Owned Business Development

The Governor's Executive Committee on Minority and Women-Owned Business Development (hereinafter referred to as the "Executive Committee") is hereby established. The membership of the Executive Committee shall consist of the following or their designees: the Commissioner of Commerce who shall serve as chairperson, the Commissioner of General Services, who shall serve as vice-chairperson, the Secretary to the Governor, the Secretary of State, the Director of the Women's Division, the Director of the Budget, the Commissioner of Labor, the Commissioner of Transportation, the Commissioner of Environmental Conservation, the Superintendent of Banking and the Superintendent of Insurance. The Director shall attend all meetings of the Executive Committee, and serve as Secretary to the Executive Committee.

Any person designated by a member to attend Executive Committee meetings shall be a deputy commissioner or equivalent position. The Executive Committee shall meet not less frequently than quarterly.

It shall be the responsibility of the Executive Committee to advise and assist the Governor and the Director in developing programs to enhance opportunities for minority and women-owned business enterprise participation in state construction and procurement programs.

Article 5. Advisory Council for Minority and Women-Owned Business Enterprise

1. The Advisory Council for Minority and Women-Owned Business Enterprise (hereinafter referred to as the "Council") is hereby established.

2. The Council shall be composed of eleven members appointed by the Governor from among persons, including, but not limited to, members of minority groups and women and representatives from minority and women-owned business enterprises. The members shall serve for a term of two years and may be reappointed. The Governor shall designate the chairperson and vice-chairperson of the Council.

3. The Council shall be advisory to the Executive Committee and shall meet at the request of the Executive Committee in which capacity it shall:

   (a) Serve as a source of knowledge and information on developments in different fields and segments of our economic and social life which affect minority and women-owned business enterprises.

   (b) Keep informed of plans, programs and activities in the public and private sectors which relate to minority and women-owned business enterprises, and advise the Executive Committee, upon its request, on any measures to better achieve the objectives of this Order.

   (c) The Chairperson of the Executive Committee shall arrange for technical assistance for the Advisory Council from procurement personnel of the State agencies.

Article 6. Responsibilities of Other State Departments, Agencies and Public Authorities

1. The head of each State department, agency and public authority covered by this Order, when requested, shall furnish information, assistance and reports to, and shall otherwise cooperate with, the Commissioners of Commerce and General Services and the Director in the performance of their functions hereunder.

2. The head of each State department, agency and public authority covered by this Order shall designate a deputy commissioner or such other similar executive officer to have primary and continuing responsibility for the participation and cooperation of that entity in matters concerning minority and women-owned business enterprise development.
3. The officials designated under the preceding paragraph, when so requested, shall review and report to the Director upon the activities and progress of the State's minority and women-owned business enterprise development program, and shall keep the Director informed of all budgets, plans and programs of their departments, agencies or public authorities affecting minority and women-owned business enterprise development.

Article 7. Reports

1. By September 1 of each year, beginning in 1984, each State agency department and public authority affected by this Order shall submit an Annual Report on Minority and Women-Owned Business Development to the Director. Such submission shall include, in a format to be specified by the Director, a report on the entity's actions with respect to minority and women-owned business enterprises. Each entity shall submit a copy of its annual report to the Commissioners of Commerce and General Services.

2. The Commissioners of Commerce and General Services shall submit to the Director by September 1 of each year, commencing in 1984, a full report of their agencies' activities hereunder and recommendations for legislation or other action desirable to effectuate the purpose of this Order.

Article 8. Policies and Standards

It is the policy of the State of New York to encourage the greatest possible participation of minority and women-owned business enterprises in all state contracts for construction and the procurement of goods and services. The Director shall establish such policies, standards, definitions, criteria and procedures to seek to achieve the award of at least twelve percent of the total dollar value of contracts let by the State annually to minority business enterprises, and furthermore, to achieve a significant increase in the participation of women-owned business enterprises, consistent with federal and State law. The Director may establish such other policies as he deems appropriate to effectuate the intent of this Order.

Article 9. Definitions

For the purposes of this Order, the following definitions shall apply:

1. Minority Business Enterprise. Any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by, citizens or permanent resident aliens who are:

   (a) Black persons having origins in any of the black African racial groups not of Hispanic origin;

   (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race;

   (c) Asian and Pacific Islander persons having origins in any of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands; and

   (d) American Indian or Alaskan Native persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification;

and such ownership interest is real, substantial and continuing. The minority and women-owned ownership must have and exercise the authority to independently control the business decisions of the entity.

2. Women-Owned Business Enterprise. Any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing.
3. Public Authority. A public authority shall include any public authority or public benefit corporation determined by the Executive Committee to fall within the coverage of this Order, and any authority which seeks to participate in the programs implemented by this Order.

4. Goods and Services. The procurement of goods and services shall include, but not be limited to, construction, design and related services.

Article 9. Revocation of Prior Executive Order and Effective Date

Executive Order No. 117, promulgated on December 9, 1981, is revoked and superseded by this Executive Order as of the date hereof.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this third day of August in the year one thousand nine hundred eighty-three.

(L.S.)

BY THE GOVERNOR

/s/ Mario M. Cuomo

/s/ Michael J. DelGiudice
Secretary to the Governor