

TRANSMITTAL LETTER FOR BOARD MEETING OF JUNE 4, 2015

COMMITTEE ON AFFIRMATIVE ACTION

Mr. David St. Pierre, Executive Director

..Title

Authority to Adopt Ordinance O15-002, Affirmative Action Ordinance, Revised Appendix D, of the Metropolitan Water Reclamation District of Greater Chicago

..Body

Dear Sir:

On July 20, 1978, the Board of Commissioners of the MWRD enacted its Affirmative Action Program as an ordinance. In April 1989, the Board adopted an interim Appendix D Ordinance that suspended all numerical goals for the utilization of minority business enterprises (MBEs) and women-owned business enterprises (WBEs) while the District investigated ways in which to craft the program so as come into conformity with the criteria established by the United States Supreme Court in *City of Richmond v. Croson*, 488 U.S. 469 (1989). The new Ordinance, passed on March 15, 1990, included flexible, industry-specific goals based upon market availability, a waiver provision and periodic evaluation. A minor revision to the Ordinance was passed on June 21, 2001. Thereafter, a major review and revision of the Ordinance took place in 2007. At that time, the District passed a revised interim Ordinance that included significant revisions. The revised Ordinance was adopted on December 6, 2007, and included a 5-year sunset provision. The Affirmative Action Ordinance was further amended April 2, 2009.

In September 2012, Colette Holt & Associates, a preeminent law and consulting firm specializing in disparity studies and affirmative action contracting programs, was retained to conduct a comprehensive review of Appendix D. On November 15, 2012, the Board of Commissioners adopted Affirmative Action Ordinance, Interim Appendix D, with a sunset date of December 6, 2014. That interim Ordinance also included a number of significant revisions.

Following adoption of the interim Ordinance in 2012, the District undertook a comprehensive Disparity Study conducted by Colette Holt & Associates to determine whether minority-owned and women-owned business enterprises have equal access to District contracts, and if not, what remedies might be appropriate to redress barriers created by race or gender discrimination. That study, which consisted of in-depth legal analysis of the District's affirmative action program supported by statistical and anecdotal evidence, commenced in March 2014 and concluded in May 2015. To facilitate completion of the Disparity Study, in November 2014, Ordinance No. O14-014 was passed thereby extending the sunset date of the interim Appendix D to June 4, 2015.

The Disparity Study reveals that there is a basis for continuing the District's program with certain recommendations for enhancing the program that will need to be thoroughly vetted by the Diversity Section and Law Department to determine whether those recommendations are in keeping with the District's vision for its program into the future.

At this time, the Affirmative Action Ordinance, revised Appendix D, includes only non-substantive changes that update the status of the Affirmative Action Program and the Ordinance.

The Ordinance now has a five-year sunset provision, whereby the Revised Appendix D will sunset on June 4, 2020. However, within the next twelve months, the Diversity Section, in coordination with the Law Department, will return to the Board with recommended program enhancements that will be the subject of a future study session.

The attached Affirmative Action Ordinance, Revised Appendix D, in the opinion of special counsel Colette Holt, represents an Affirmative Action Program that meets all current legal requirements, while addressing important areas of concern for both the Board of Commissioners and the business community. The Ordinance demonstrates the Board's continuing commitment to provide a level playing field for minority and women businesses engaged in the construction and construction related industries in the greater Chicago area.

Requested, Beverly Sanders, Acting Diversity Administrator, BS:TCS:RMH:HSW:MTC:bh
Respectfully Submitted, Barbara J. McGowan, Chairman Committee on Affirmative Action
Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for June 4, 2015

Attachments