

EXECUTIVE ORDER NO. 22-15

DIRECTING STATE AGENCIES TO TAKE SPECIFIC STEPS TO IMPROVE EQUITY IN STATE PROCUREMENT AND CONTRACTING; RESCINDING AND REPLACING EXECUTIVE ORDER 18-03.

The State of Oregon is a major purchaser of goods and services in this State. For many years, it has worked to operationalize its commitment to use its market power to increase economic opportunity and entrepreneurial opportunities for minority-owned, women-owned, service-disabled- veteran-owned, and emerging small businesses.

On February 6, 2012, Executive Order No. 12-03 ordered state agencies to set targets and implement other initiatives for promoting diversity and equal opportunity for disadvantaged and emerging small businesses.

On June 25, 2015, Governor Kate Brown signed into law House Bill 3303, which establishes a Service-Disabled Veteran certification. The Certification Office for Business Inclusion and Diversity (COBID) certifies eligible minority-owned, women-owned, service-disabled-veteran-owned, and emerging small businesses. Small businesses within Oregon continue to be a vital and dynamic sector of the economy. Oregon is committed to creating an environment that supports the ingenuity and industriousness of COBID Certified Firms.

On March 22, 2018, Governor Kate Brown signed Executive Order No. 18-03, directing state agencies to take further steps to promote diversity and inclusion for entrepreneurial opportunities for minority-owned, women-owned, service-disabled-veteran-owned, and emerging small businesses.

As part of implementation of Executive Order 18-03, the Department of Administrative Services (DAS) adopted DAS Statewide Policy 107-009-0030, which provides more specific direction to state agencies on how to embed equity into contracting processes, and continue to encourage the diversification of state contracting.

Despite these efforts, there continue to be gaps and barriers to state contracting for minority-owned, women-owned, service-disabled-veteran-owned, and emerging small businesses, and businesses for whom language access is a barrier. There remains a strong need to continue to promote greater equity in state contracting. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. It acknowledges that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.



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To better understand these issues and seek solutions, Governor Kate Brown convened the Racial Justice Council (RJC) Procurement and Contracting Equity workgroup to better understand these barriers. The workgroup developed a list of proposals to further the State's goal of embedding equity into state procurement and contracting processes, which it presented to Governor Brown.

Having reviewed the recommendations from the RJC Procurement and Contracting Equity Workgroup, I hereby order the following steps to continue the State's work towards improving entrepreneurial opportunities for minority-owned, women-owned, service-disabled-veteran-owned, and emerging small businesses, either as prime contractors or subcontractors. These efforts reflect Oregon's commitment to oppose all forms of discrimination and demonstrate its intent to create an environment that supports economic growth in all sectors.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

Pursuant to my authorities under Article V, section 1 of the Oregon Constitution, I hereby order:

1. **Statement of Policy:** The executive branch of government of the State of Oregon is committed to taking active steps toward increasing and promoting diversity, equity, and inclusion (DEI) values and outcomes across procurement processes to ensure a level playing field for all businesses, including minority-owned, women-owned, emerging small, and service-disabled veteran-owned businesses, to receive equitable opportunities to compete for, and be awarded, state procurements.
2. **Definitions:** As used in this Executive Order,
 - a) "State agency" or "agency" means all state agencies, boards, and commissions that are within the executive department, as defined by ORS 174.112, excluding District Attorneys.
 - b) "State Procurements" or "procurement" means procurement contracts, solicitations, or processes that result in any form of contract to procure goods or services by a state agency, but excludes grant agreements.
 - c) "COBID firms" means firms that hold a current certification through Oregon's Certification Office for Business Inclusion and Diversity as a minority business enterprise, a Women Business Enterprise, Service-Disabled Veteran Business Enterprise, or Emerging Small Business.
 - d) "Eligible firms" means COBID firms and firms that could qualify as a COBID firm if they went through the certification process, regardless of whether or not they hold a current certification.



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- e) “Offeror” means a person or entity that submits a bid, proposal, quote, or similar response to a solicitation.
- f) “Governor’s Policy Advisor” means the Governor’s Policy Advisor for Economic & Business Equity established by ORS 200.025, or, the Director of the Governor’s Office of Equity and Racial Justice, or their designee.

3. **Directives to state agencies regarding embedding an equity lens in all aspects of state procurement processes:** State agencies engaged in state procurements are directed to take concrete steps to further the policy outlined in paragraph 1 of this Executive Order, including but not necessarily limited to the following:

- a) Statement of DEI values: Explicitly include a statement of State’s commitment to DEI values in all procurement solicitations.
- b) Methods and tools: Establish methods and tools for considering racial equity and other DEI values when developing solicitation requirements, evaluation criteria/processes and when making decisions at all procurement thresholds.
- c) Considering DEI values and practices in purchase decisions: Consistent with applicable law, including but not limited to ORS 279A.015 and ORS 184.423(1)(a), (f), state agencies shall:
 - i) Confirm offeror has documented DEI values and practices.
 - ii) Require offerors to utilize a DEI outreach plan in the offerors’ selection of sub-contractors or sub-consultants; and
 - iii) In selections in which qualifications are evaluated, including but not limited to a request for proposals process, consider offerors’ DEI values and practices as part of the evaluation.
- d) Equity review of templates and processes: Consistent with the five year action plan developed under section 7(a) of this Executive Order, conduct an equity review of procurement templates and processes, and update as appropriate.

4. **Directives to state agencies regarding improving data collection and data transparency:** In order to ensure that the State is able to advance the statement of policy outlined in paragraph 1 of this Executive Order, and to ensure accountability, we must collect better data and be more transparent about that data. Accordingly, I hereby order the following:

- a) Data collection through State Systems:
 - i) DAS shall ensure there is means to electronically collect race and gender data for all contractors, including prime and sub-contractors, for state procurements stored in the State’s central procurement system.



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- ii) DAS shall develop an accompanying rule, policy and/or procedure to establish the guidelines for collecting this data.
- iii) State agencies using contract/procurement systems other than the State's central system to track state procurements must also ensure there is a means to collect race and gender data for its contractors, including prime and sub-contractors.
- b) Oregon Procurement Equity Website:
 - i) DAS shall establish a procurement and contracting equity website ("the website") available to the public. The website will communicate the plans, actions and progress the State is making to implement the policy and directives of this Executive Order.
 - ii) At such time as data collection systems are in place, a Data Dashboard will be added to the website, which shows, at a minimum, regular data analysis and reporting of state procurement awards including COBID firms disaggregated by category, and race, ethnicity, and gender data when available.

5. Directives to state agencies regarding proactive outreach and engagement: In order to advance the policy outlined in paragraph 1 of this Executive Order, state agencies must develop and maintain an agency culture that is inclusive, proactively engages with eligible firms, and engages in proactive community engagement efforts and initiatives to foster trust and partnerships. Accordingly, state agencies are directed to take concrete steps to improve their proactive outreach and engagement with eligible firms that are prospective offerors on state procurements, including but not necessarily limited to the following:

- a) Staff: Dedicate staff capacity and resources to operationalize culturally and linguistically responsive community engagement and outreach staff.
- b) Access: Increase agency resources to provide language access (e.g. translation, interpretation, American Sign Language services) as needed to ensure all Oregonians have access to the same level of information and support.
- c) Relationship Building: Build intentional relationships and partner with local culturally specific organizations to conduct culturally responsive outreach such as networking events and information sessions.
- d) Project Planning: When planning for a state procurement, agencies must embed proactive community outreach and engagement activities and timelines to help ensure that solicitation requirements are fair and equitable, and not unintentionally creating barriers for eligible firms to participate.



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- e) Procurement Planning & Timeline: When developing procurement timelines, agencies must embed additional outreach and engagement activities and timelines to ensure eligible firms are aware of opportunities available to them.
- 6. **Directive to state agencies regarding training**: State agencies shall ensure training of all management and staff with procurement planning responsibilities and/or conducting duties specific to the implementation of the executive order on the requirements of this Executive Order and implementation of the DAS five year action plan described in paragraph 7(a) of this Executive Order.
- 7. **Accountability for directives under paragraphs 3 to 6 of this Executive Order**:
 - a) DAS Five Year Action Plan: DAS, in collaboration with other state agencies, shall create a five year action plan (“five year action plan”) to implement paragraphs 3 to 6 of this executive order over a period of five years. The five year action plan will apply to Executive branch agencies subject to DAS procurement authority. The initial five year action plan is due by October 1, 2022 and must delineate the high level actions, timelines, phases and existing and additional resources required for implementation. State agencies with procurement authority independent of DAS can choose to work with the DAS five year action plan, or create a separate five year action plan due by October 1, 2022, and also provide updates twice yearly as described in subsection b, below.
 - b) Twice Yearly Reports: DAS shall report back to the Governor’s Policy Advisor regarding implementation of the action plan every six months for the duration of the five year action plan timeframe.
 - c) Preparing budget requests for resource needs to implement this Executive Order: In many cases state agencies will be able to implement these directives by focusing existing resources on the critical DEI priorities outlined in this Executive Order. To the extent that DAS, ODOT, Business Oregon, or any other state agency is not able to implement one or more of these directives without additional resources are directed to prepare a policy option package as part of their agency request budget for 2023 legislative session or subsequent sessions, describing the resources needed and activities planned to accomplish these directives. The five year actions plan and implementation of this executive order are understood to be scalable depending on the timing and amount of resource allocated.



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- 8. Directives to Business Oregon regarding business support and capacity building:** In order to meet the State's goals of increasing and promoting DEI in state procurement, the State must do more to provide contractors and prospective contractors with ongoing technical assistance, training, mentorship and coaching that are culturally responsive and linguistically accessible. Accordingly, I hereby direct that:
- a) Technical assistance: Business Oregon shall identify, and obtain when possible, necessary means to dedicate staff and other resources to provide technical assistance programs that provide pre- and post-COBID certification support.
 - b) Building nonprofit technical capacity: Business Oregon shall identify, collaborate with, and support the development of technical capacity for culturally specific and responsive nonprofits who support eligible firms that engage in public contracting.
 - c) Central information hub: Business Oregon shall identify and pursue appropriate resources to implement a central information hub to help businesses navigate available resources through a navigator website and hotline at Business Oregon.
 - d) Five year action plan: Business Oregon shall create a five year action plan ("Business Oregon five year action plan") to implement paragraph 8 of this executive order over a period of five years. The Business Oregon five year action plan shall be produced and submitted to the Governor's Policy Advisor not later than October 1, 2022. Business Oregon shall report back to the Governor's Policy Advisor regarding implementation of the Business Oregon five year action plan every six months for the duration of the five year action plan timeframe.
- 9. Directives to the Oregon Department of Transportation (ODOT) regarding public works project planning, procurement equity and contract compliance:**
- a) Report: ODOT shall create a report of existing agency-level procurement equity initiatives including measures to address proactive outreach and engagement, prompt payment, project workforce diversification, disaggregated data collection of workforce and subcontractors, and Disadvantaged Business Enterprise business supports.
 - b) ODOT five year action plan: ODOT shall create a five year action plan no later than October 1, 2022, to identify a plan to embed equity into its agency procurement processes and diversify the public works project workforce.
 - c) The report and action plan required by this paragraph shall be produced and submitted to the Governor's Policy Advisor not later than October 1, 2022.



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- 10. Directive regarding DAS-led Procurement Equity Workgroup:** DAS is directed to convene a cross-agency workgroup with a subset of state agencies to implement the recommendations from the ongoing statewide disparity study, as well as to identify additional opportunities to embed equity into state contracting, including but not limited to identifying opportunities to embed equity into Client Services contract scopes of work and contractor selection process. DAS shall invite the Governor's Policy Advisor or their designee to participate on this workgroup. DAS shall convene this workgroup not later than October 1, 2022.
- 11. Monitoring by the Governor's Policy Advisor:** The Governor's Policy Advisor shall monitor the progress of each state agency.
- 12. Entities not covered by the directives in this Executive Order:** Cities, counties, and other public entities outside the scope of this Executive Order are encouraged to develop, implement, and participate in the policies and processes outlined in this Executive Order, as appropriate and to the extent allowable by law.
- 13. EO 18-03 Rescinded:** Executive Order 18-03 is rescinded and replaced with this Executive Order.
- 14. Coordination with DAS Statewide Policy 107-009-0030:** This Executive Order is intended to complement and work together with DAS Statewide Policy 107-009-0030 for the advancement of business equity, inclusion and engagement in public procurement.
- 15. No right of action/follow all laws:** This Executive Order is not intended to create, and does not create, any individual right, privilege, or benefit, whether substantive or procedural, enforceable at law or in equity by any party against the State of Oregon, its agencies, departments, or any officers, employees, or agents thereof. Nothing in this Executive Order should be construed to require or allow any state agency to violate any applicable state or federal law.
- 16. No preferential treatment:** The policies and directives announced in this Executive Order shall not result in any preferential treatment, advantage, or disadvantage for any particular business in obtaining contracts with the State of Oregon.



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- 17. Severability:** If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Executive Order is for any reason held to be invalid, such holding shall not affect the validity of the remaining portions of this Order.
- 18. Effective Date:** The provisions of this Executive Order are effective immediately, unless otherwise specified, and remain in effect until terminated by the Governor.

Done at Salem, Oregon, this 3rd day of August, 2022.

Kate Brown
GOVERNOR

ATTEST:

Shemia Fagan
SECRETARY OF STATE