

EXECUTIVE ORDER No. 213

WHEREAS, The New Jersey Legislature has enacted numerous statutes requiring the State and its departments, divisions, agencies and authorities to set aside a certain percentage of construction, goods, equipment and services contract awards for minority and female businesses, including provisions of the Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, C.52:32-17 et seq.; the New Jersey Sports and Exhibition Authority Law, C.5:10-1 et seq.; the Casino Control Act, C.5:12-1 et seq.; the New Jersey Wastewater Treatment Trust Act, C.58:11B-1 et seq.; the New Jersey Urban Development Corporation Act, C.55:19-1 et seq.; the New Jersey Local Development Financing Fund Act, C.34:1B-36 et seq.; and the New Jersey Transportation Trust Fund Authority Act of 1984, C.27:1B-1 et seq.; and

WHEREAS, The United States Supreme Court in the case of the City of Richmond v. Croson invalidated as violative of the Fourteenth Amendment a minority set-aside program administered by the City of Richmond that reserved 30 percent of the dollar amounts of construction contracts awarded by the City for minority businesses; and

WHEREAS, The United States Supreme Court in Croson invalidated the City of Richmond's minority set-aside program because the City had failed to meet strict standards established by the Court for demonstrating prior racial discrimination by the City in letting contracts and because the program had not been narrowly tailored to remedy any identified prior discrimination; and

WHEREAS, New Jersey continues to strongly support minority and female set-aside programs as a vehicle for remedying discrimination, for ensuring that minority and female businesses receive a fair share of State business and for providing an opportunity for those businesses to grow, to develop competitively and to establish favorable reputations and expertise; and

WHEREAS, In light of Croson, New Jersey must be able to demonstrate that its minority or female business set-aside programs are narrowly tailored to further compelling governmental interests in remedying prior racial or sex discrimination by government; and

WHEREAS, The creation of a study commission will permit New Jersey to investigate, research and report on the nature and scope of

any discrimination in public works procurement and construction contracts awarded by the State and to recommend remedies for any discrimination;

NOW, THEREFORE, I, Thomas H. Kean, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby created the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts (hereinafter referred to as the Study Commission).

2. The Study Commission shall consist of 18 members as follows: two members of the Minority Business Advisory Council, two members of the Small Business Advisory Council, two members of the Women's Business Advisory Council, one member of the Governor's Authorities Unit and three at-large members, all appointed by the Governor; one representative each from the Assembly and the Senate; and the Commissioners of Commerce, Energy and Economic Development, Environmental Protection and Transportation, the Treasurer, the Attorney General and the Chancellor of Higher Education, or their designees.

3. The Study Commission shall organize as soon as practicable after the appointment of its members. A Chairperson shall be appointed by the Governor and a Vice Chairperson shall be selected by and from among the members of the Study Commission. The members shall serve without compensation. In the absence of the Chairperson, the Vice Chairperson shall have all powers and duties of the Chairperson. The Commission shall meet periodically and conduct its affairs in a timely manner.

4. The Study Commission shall investigate the nature and scope of any discriminatory practices in the letting of construction and procurement public works contracts by the State of New Jersey. The Commission shall gather existing data, reports and studies and shall prepare an analysis of this information in order to develop probative evidence of any prior or present discrimination in public works procurement and construction contracts awarded by the State. The Study Commission shall compare the percentage of minority and female businesses in the State qualified to receive public contract awards to the percentage of State construction and purchase contracts awarded to minority and female businesses and shall investigate the State's participation, active or passive, past or present, with private industry, unions or others in excluding minorities and

female businesses from public works procurement and construction projects.

5. Where the Study Commission finds evidence of discriminatory practices in State contracting, it shall identify and evaluate remedies for these practices consistent with guidelines established by the Supreme Court in Croson. In considering the use of minority or female business set-asides, the Study Commission shall evaluate the effectiveness of the State's experience in the use of set-aside programs to remedy discrimination. The Study Commission shall also evaluate and make recommendations concerning the geographic locations of businesses that should be included in any set-aside programs and mechanisms that will ensure effective implementation and enforcement of any set-aside programs.

6. The Study Commission is authorized to call upon any department, office, division or agency of this State to supply it with data, and any other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Study Commission to furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order. The Attorney General shall act as legal counsel to the Study Commission.

7. The Study Commission shall report its findings and recommendations concerning past and present discriminatory practices in public works procurement and construction contracts to the Governor no later than six months after the effective date of this Order.

8. Each department, office, division, agency or authority of this State responsible for the administration of a minority or women's set-aside program shall seek the advice of the Attorney General as to the legality of the set-aside programs it administers and shall undertake any and all measures necessary to implement in a legally valid manner those programs or other comparable programs designed to meet the objectives set forth in this Order.

9. This Order shall take effect immediately and shall expire six months after its effective date.

Issued August 14, 1989.