

from black businessmen and legislators, and it involved two aspects—assuring greater participation by black-owned contractors and greater employment opportunities for blacks in white-owned firms doing public business.

The 1961 law was directed at the second goal, as was a 1976 amendment to the State Code of Fair Practices promulgated by gubernatorial executive order. The revised code, effective 1 November 1976, required all state contracts to contain not only anti-discrimination clauses but also provisions for an affirmative action plan “directed at increasing the utilization of women and members of minority groups on State Public Works Projects” that complied with specific criteria set out in the executive order. Responsibility for enforcement was placed squarely with the board; its approval of the affirmative action plan was made a prerequisite to the award of a contract.⁵⁶

For a while, again at the urging of black legislators, a small compliance unit was established under the board’s aegis for the purpose of monitoring compliance with the new executive order. Eventually, however, the departments of Transportation and General Services developed their own capabilities in this regard, and the board’s unit was disbanded. Plan approval and monitoring are now done on the departmental level.

The push to increase the share of state business going to black firms came primarily in the context of the Baltimore subway project. As part of its overall compliance with federal affirmative action requirements, DOT adopted a standard that anticipated 10 percent of the subway work going to minority contractors or subcontractors. For a while—with respect to the first two or three contracts—that created a dual problem for the board: deciding who is and who is not a minority contractor and deciding what to do when the 10 percent goal was not met.

An example of the second problem arose in connection with the first major construction contract submitted to the board—the Bolton Hill tunnel. When that contract came before the board on 22 October 1976, an association of black contractors protested, claiming that the amount reserved for minority contractors was considerably less than 10 percent.⁵⁷

The low bid on the prime contract was \$41.6 million, of which only \$1.1 million appeared scheduled for minority subcontractors. Sen. Robert Douglass, a black legislator acting as spokesman for an association of black contractors, recommended that the contract not be approved. The DOT representative responded that diligent efforts had been made to distribute a greater share to minority firms, but that there were only certain parts of the work for which qualified minority firms could be found. The board directed DOT to negotiate the matter with the association and deferred action on the prime contract. On 12 November the board was informed that after several meetings an understanding had been reached whereby through joint ventures and other techniques the minority share had risen to \$2.8 million—more than double the original proposal.⁵⁸

The first problem—deciding who is a minority contractor—was more subtle. The bids submitted by the prospective prime contractors were supposed to contain a breakdown on the intended subcontractors. The black contractors would go over the subcontractor lists carefully to see whether and to what extent those firms were black-owned and operated. In a number of instances in the beginning, claims were made that some of the subcontractors designated as minority firms were really owned by whites and that the black presence was a sham. Where joint ventures between black and white firms were involved, as they often were, disputes arose as to what percentage of the business awarded to those joint ventures should be counted toward the overall 10 percent goal. On at least two occasions the board was put squarely in the middle

56. Executive Order 01.01.1976.05, 9 July 1976.

57. BPW Minutes, transcripts 22 October 1976, pp. 91-96, MdHR 40328-57-3.

58. BPW Minutes, 22 October 1976, pp. 43-44, MdHR 40281-316-3; transcripts, 12 November 1976, pp. 18-35, MdHR 40328-59-1.