

STATE of MINNESOTA



TIM PAWLENTY
GOVERNOR



EXECUTIVE ORDER 05-17

PRESERVING COMPETITION IN STATE CONSTRUCTION CONTRACTS

I, TIM PAWLENTY, GOVERNOR OF THE STATE OF MINNESOTA, by the authority vested in me as Governor by the Constitution and laws of the State of Minnesota do hereby issue this executive order:

WHEREAS, it is important that the State promote and ensure open competition on State construction projects; and

WHEREAS, in awarding contracts and setting the terms for contracts state departments should not discriminate against government contractors on the basis of labor affiliation or lack thereof; and

WHEREAS, the promotion of competition and equal access to government construction contracts will reduce construction costs to the State and to the taxpayers and expand job opportunities, especially for small and disadvantaged businesses;

NOW, THEREFORE, I hereby order:

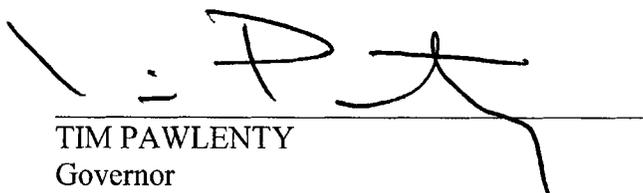
1. After the date of this order, all contracts or subcontracts entered into by any state department, as defined by Minnesota Statutes, 2004, Section 15.01, will be governed by this order.
2. To the extent permitted by law, any state department entering into any construction contract must ensure that in its contracts, bid specifications, project agreements, construction contracts, or other controlling documents the state department, or an agent entering a construction contract on behalf of a state agency, does not:

- (a) Require, or prohibit, bidders, contractors, subcontractors or vendors to, or from, entering into or adhering to agreements with one or more labor organizations;
 - (b) Otherwise discriminate against bidders, contractors, subcontractors or vendors for becoming, refusing to become, remaining or refusing to remain signatory to or otherwise to adhere to agreements with one or more labor organizations;
3. Nothing in this order prohibits contractors or subcontractors from voluntarily entering into agreements described in section 2.
4. The head of a state department may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of any or all of the provisions of this order, if the department head finds that special circumstances require an exemption in order to avert threat to public health, safety, security, or extenuating economic circumstances. However, a finding of “special circumstances” under this section may not be based on the possibility or presence of a labor dispute concerning the use of contractors, subcontractors, or vendors who are non-signatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.
5. Definitions.
 - (a) “Construction contract” as used in this order includes, without limitation, any contract for the construction, rehabilitation, alteration, conversion, extension, maintenance, or repair of buildings, highways, bridges, tunnels, transportation facilities, water or sewage treatment plants, power plants, or other improvements to real property.
 - (b) “Labor organization” as used in this order shall have the same meaning it has in 29 U.S.C. 152(5).
6. With respect to construction contracts which have not yet been entered into prior to the date of this order, all state departments affected must take action, to the extent practical and permitted by law, to conform contracts, related bid specifications, project agreements, and other controlling documents, in order to implement the provisions of this order.
7. The heads of state departments will immediately revoke any orders, rules, regulations, guidelines, or policies related to construction contracts which are not consistent with this order, or immediately commence revocation action pursuant to law.
8. This order is intended to improve the internal management of state government and state departments and to further the objectives of Minn. State. 16C.02, et seq. and related laws. It is not intended to, nor does it, create or limit any additional right to administrative or judicial review, or any additional right, whether substantive or procedural, enforceable by

any party against the State of Minnesota, its agencies or instrumentalities, its officers or employees, or any other person.

Pursuant to Minnesota Statutes 2004, section 4.035, subdivision 2, this Executive Order will be effective fifteen (15) days after publication in the State Register and filing with the Secretary of State and will remain in effect in accordance with Minnesota Statutes 2004, section 4.035, subdivision 3.

IN TESTIMONY WHEREOF, I have set my hand this 21st day of November, 2005.



TIM PAWLENTY
Governor

Filed According to Law



MARY KIEFMEYER
Secretary of State