Evaluating Political Signals: The Nature of Bureaucratic Response in Minority Preference Purchasing

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What is This?
Evaluating Political Signals: The Nature of Bureaucratic Response in Minority Preference Purchasing

Jessica Terman

Abstract

The bureaucratic response literature has focused on the quantity and timing of agency outputs in response to political signals. This focus on quantity rather than more qualitative measures such as the content and character of response has made it difficult to fully understand the causes and conditions under which response occurs in relation to a given signal. In the context of minority preference purchasing policy in the State of Florida, this study examines the relationship between political signals and the content and character of bureaucratic response—what is referred to here as the nature of bureaucratic response. A theory is developed and supported through interview and archival data to suggest that bureaucratic actors evaluate signals and policymaker intentions in determining if and how to respond. The article also provides one of the first in-depth examinations of the inner workings of minority preference purchasing.

Keywords

bureaucratic response, minority preference purchasing, contracting-out, social equity, implementation, bureaucratic politics, political signals

Introduction

Imagine that Congress creates a federal agency to deal with a large problem, one that involves a significant part of the national economy. Suppose that Congress instructs the agency: Do what you believe is best. Act reasonably and appropriately. Adopt the legal standard that you prefer, all things considered. (Sunstein, 2008, p. 1407)

The passage above is from Cass Sunstein’s 2008 article, “Is OSHA Unconstitutional?” Sunstein, a legal scholar and former Obama White House official, makes the argument that,
through the Occupational Safety and Health Act (OSHA), Congress has granted the United States Department of Labor (DOL) almost unbridled legislative power to do what it sees as “reasonably necessary or appropriate to provide safe or healthful employment” (Sunstein, 2008, p. 1407). What if the DOL decides that employers already have a vested interest in caring about the health and safety of their workers and allows employers to police themselves rather than imposing external regulations? Alternatively, what if the DOL uses a strict cost-benefit analysis and decides that it is reasonable for employers to spend US$500 million for every US$400 million gained in worker safety benefits? These standards have distinct and significant consequences. Yet, the agency actors most directly involved in making these decisions are unelected public bureaucrats (Kerwin, 2011). In addition, the roadmaps that guide them are often vague statutes (Asimow & Levin, 2009; West, 1995) and the ambiguous or conflicting preferences of elected officials (Wood & Waterman, 1993). Although Sunstein’s argument is tinged with sarcasm, it is nonetheless an important question: What influences how administrative agencies use their policymaking authority in responding to political preferences?

The majority of the empirical literature answers this question by studying the relationship between political signaling and bureaucratic response. Scholars have used primarily quantitative analyses to examine how political signals shape various measures of bureaucratic response (Carpenter, 1996; Carpenter, Chattopadhyay, Moffit, & Nall, 2010; Shipan, 2004; Waterman, Rouse, & Wright, 2004). For example, the number of regulatory outputs that correspond with a set of political preferences are expected to increase when a signal is shared by the legislative and executive branches (Wood & Waterman, 1993) and when the signals are sent repeatedly (Carpenter, 1996).

As it stands, the extant literature does not explore the relationship between the more qualitative measures of agency response and the political signals that prompt these responses. In this study, I refer to these different forms of response as the nature of response. For example, does the agency respond with formal notice and comment rulemaking or through internal agency memos and directives (see May, Workman & Jones, 2008)? Does the agency response grant significant implementation discretion to public bureaucrats and administrators in a way that weakens or strengthens the desired outcomes and policy preferences of elected officials? Does the response have specific compliance guidelines to ensure that the political preferences embedded in the signal are adhered to? And, how do political signals explain these variations in the nature of response? By examining three significant program changes at the agency level in the understudied area of minority preference purchasing in the State of Florida, this study uses semistructured interviews to examine how the characteristics of political signals influence the nature of bureaucratic response.

This study makes a number of contributions. First, a framework is developed that opens up the black box of the agency to show how agency policymakers evaluate political signals and alter the nature of response in terms of rulemaking, compliance guidelines, and implementation discretion. Second, by using the issue area of minority business enterprise (MBE) purchasing, this study examines an important and empirically under-examined area of public management. While there is a strong tradition of studying social equity in the field of public administration (Pitts, 2011), less is known about how programs that promote social equity actually work and are implemented. MBE procurement programs are prime examples of how governments can encourage more socially equitable outcomes. This study qualitatively examines various stages of MBE procurement policy across both time—25 years—and institutions—executive, legislative, and bureaucratic.
The Relationship Between Political Signaling and Bureaucratic Response: A Path to Understanding the Nature of Response

Research on political control of the bureaucracy originated in the 1980s with principal-agent modeling, suggesting that elected principals and administrative agents have conflicting preferences. The uncertainty that elected officials have surrounding bureaucratic decision-making has been assumed to require political signals, which are embedded in statutory adoptions, budgetary shifts, agency-head appointments, and other tools of political control (Calvert, McCubbins, & Weingast, 1989; McCubbins, Noll, & Weingast, 1987; McCubbins, Noll, & Weingast, 1989; Moe, 2006). Political signals are generally defined as latent messages to the bureaucracy that convey the policy preferences of elected officials (Carpenter, 1996). However, the literature has measured and discussed these signals primarily by the mechanisms through which they are transmitted (i.e., legislation, budgetary shifts; see Carpenter, 1996; Wood & Waterman, 1994; Wood & Waterman, 1993).

Empirical literature suggests that bureaucratic actors do respond to political signals in terms of policymaking and regulatory outputs such as industry inspections and licensing denials (Carpenter, 1996). Given these outputs, scholars have studied how different types of signals and different contexts change responsiveness. Carpenter (1996) suggests that budgetary shifts, coupled with congressional oversight mechanisms, send signals to agency actors that heighten outputs and performance over time; he argues that timely response is rare and political principals must send repeated signals for agencies to respond. Shipan (2004) finds that political control of agency actions is conditional on the policy preferences of the agency, committee and Congress while Ringquist, Worsham and Eisner (2003) show that political signaling is heavily influenced by the public salience of political issues.

Embedded in this literature is the idea that agency actors are concerned with the diverse preferences of political actors, the fact that not all signals are created equal, and that responding too strongly or too weakly can have adverse consequences. However, current studies generally measure response in terms of the time and amount of response (i.e., regulatory outputs). This definition of bureaucratic response is limited. These studies cannot differentiate between different types of response. In other words, how do political signals influence how bureaucratic actors use their policymaking discretion? This discretion is what influences the nature of bureaucratic response.

This study assumes that the nature of bureaucratic response is different across signals. Specifically, the nature of response refers to the content and character of response in relation to the signal and the vehicle in which the signal is embedded—that is, a piece of legislation. For example, some responses are more specific on how to carry out political preferences or provide more bureaucratic discretion in relation to the legislation that they are implementing than others. This relationship between the signal and the response has been largely unexplored in the literature. While using quantitative outputs such as referrals for litigation, license denials, and the likes (Carpenter, 1996; Wood & Waterman, 1993) are informative for gauging response, they do not explore the causal mechanisms between the political signal and the actual content and character of an agency’s response. The following discussion elaborates further on what is meant by the nature of response.

In the process of response, agency actors must evaluate the political signal that has been sent to them (Wood & Bohte, 2004; Wood & Waterman, 1993). The vehicle for the signal is often a piece of legislation, executive order, or some other tool of political control that elected officials
have over the bureaucracy (Calvert et al., 1989; McCubbins et al., 1987). Agencies care about evaluating signals because, depending on the signals sent, some forms of response are more costly than others (Bowornwathana & Poocharoen, 2010; Krause, 2003; Stephenson, 2007). Thoughtful response in the form of formalized implementation rules (Mazmanian & Sabatier, 1983; Sabatier, 1986), specific compliance guidelines, and systematized agency processes (Joaquin, 2009) are unnecessarily time consuming when political actors pass legislation for symbolic purposes (Schneider & Ingram, 1997). Alternatively, superficial or flippant response can be costly in terms of agency reputation (Carpenter & Krause, 2012), diminished discretion and budgetary appropriations when political actors pass legislation from which they would like to see meaningful policy outcomes (Krause & Corder, 2007). Thus, bureaucratic actors must consider the political signal before deciding how they will respond and the nature of that response. It is the phenomenon of receiving a political signal, evaluating that signal, and deciding if and how to respond that is investigated here. For the most part, this process has remained inside the black box of the agency. The next section details the policy context in which response is investigated.

**Florida Minority Business Enterprise Procurement**

The nature of bureaucratic response is examined in the context of MBE procurement in Florida. MBE purchasing policies allow government agencies to set aside a certain percentage of government contracts specifically for minority-owned businesses or mandate that government contractors allot a portion of their subcontracts to minority vendors (Arrowsmith & Hartley, 2002; Rice, 1991). In general, these programs are based on the premise that providing assistance to businesses that have traditionally been discriminated against is in the government’s interest because it creates a more diverse marketplace (Mathews & Rice, 1999).1

MBE policies are somewhat comparable across state contexts (NASPO, 2009) because they have been heavily litigated in federal court, which has forced certain national standards (Mathews & Rice, 1999; Rice, 1991). In the 2009 NASPO Survey, 13 out of 45 responding states (29%) said that they gave minority-owned businesses preference during the procurement process. Most of these programs are centralized, meaning that one agency oversees and sets policy for the contracting and procurement done by all other state agencies (NASPO, 2009). This type of centralization is intended to ensure that the implementation of MBE programs is standardized across all executive agencies. In Florida, the agency that develops centralized purchasing policy and administrative rules is the Department of Management Services (DMS). Thus, the agency response that is examined here is the response from DMS. All other agencies within the state are under its centralized authority in terms of MBE preference and procurement policy.

Florida is a good case for this study for a number of reasons. First, Florida was an early adopter of minority preference purchasing with the first set aside having occurred in 1982. Thus, Florida’s MBE program is mature and has undergone a number of changes that can inform us about the life cycle of MBE programs in other states. This will help scholars develop theory on the evolution of these programs. Second, Florida’s MBE program has experienced a great number of policy changes, which make it a rich case for tracing various types of signaling and response. Third, Florida is a trendsetter in procurement policy. The state was one of the earliest to contract out the massive public responsibilities of corrections and social services—many states have followed suit. As a result, it is likely that the public bureaucracies of other states will look to the Florida case to decide how to implement political signals in the area of MBE preferences.

The specifics and vernacular of MBE programs are as follows. The main mechanism in MBE policies for achieving desired outcomes is the amount of money that agencies are expected to spend on contracting with/purchasing from MBEs. The spending that goes into reaching these
goals is referred to as “MBE spend.” Organizations engaged in preference purchasing generally use percentages or total dollar amounts to set MBE spend. Percentages are developed out of the total amount of budgetary spending on agency contracting/purchasing—known as “MBE industry dollar goals.” In determining MBE industry dollar goals, the total amount of budgetary spending is important. If agencies want to decrease the MBE spend goal—making it easier to achieve—they will advocate for certain contracts/purchases to be “off budget.”

MBEs often get preference by virtue of the fact that they have been formally certified by a governmental body. This ensures that firms with MBE status are, in fact, minority vendors and are not shell companies. A “shell company” refers to an MBE firm that produces no substantive output and instead acts as a front for a nonminority-owned firm. This can be a problem because non-MBE firms want to game the system in order to receive preference in the bidding process. Counting only certified MBE-awarded contracts in MBE spend makes goals more difficult to achieve. As will be shown later, another way to increase MBE spend is to include certified and noncertified MBEs in the count of minority businesses with whom the state is contracting.

**Research Design**

An inductive–deductive approach (Miles & Huberman, 1994) was used to investigate how political signals influence the nature of bureaucratic response in MBE preference policy. The investigation was bound by (a) focusing on what interviewees identify as significant changes or bureaucratic responses in agency-level MBE policy; and (b) examining the nature of agency response and the factors that influence variation in that response from one particular perspective—that of high-level Florida procurement professionals.

**Sample**

The sampling frame consisted of 39 past and present purchasing and contracting officers who were or had been in leadership positions in the 24 major Florida administrative agencies and had worked a minimum of 10 years in state purchasing. A purposive sample was drawn of purchasing professionals within varying demographic characteristics across agencies with different functional and substantive responsibilities. Emails were sent to 22 purchasing directors across 10 different agencies. The goal from this purposive sample was to identify individuals willing to discuss their experiences with Florida MBE procurement policy who could point to others who had been employed with the state during different periods since the adoption of the MBE preference rules. This use of snowball sampling helped to identify individuals with more institutional knowledge about the MBE program, in addition to finding individuals who would be willing to participate in the study by virtue of the fact that their colleagues had chosen to participate.

Many of the stories that were shared were sensitive and potentially threatening to informants if their identities were disclosed. Furthermore, many state employees were fearful that they would be affected by the recent cutback reforms implemented by the Governor (see Bousquet, Wang, Thalji, & Sanders, 2011, July 5; Rohrer, 2011, June 29) and at least half mentioned that they were being discouraged from discussing internal policy without prior approval. For example, it proved extremely difficult to contact individuals who currently worked in DMS. All of the individuals who had worked in DMS and who were willing to be interviewed had retired or had moved from DMS to another agency at the time of the interview. In one of the most telling interactions, I received the following response to my request for an interview with one DMS official: “Hello, I have forwarded your request up the chain—I will let you know.” No follow-up email was received from this person.
The issue of secrecy and the problem with getting informants from DMS was ameliorated in two ways. First, Florida procurement and contracting officials are highly networked and discuss recent events and happenings in Florida purchasing. Ten informants discussed situations in which they had called their colleagues at DMS to discuss rule development, legislative activity, and basic implementation issues. Most informants were or had been members in the local chapter of the National Institute of Public Procurement (NIGP). They all reported that they had attended or continued to attend then monthly meetings held by DMS to discuss recent issues in state procurement. This suggests that there was common knowledge among informants across the agencies, including DMS. Therefore, while not ideally placed, respondents could speak to the inner workings of DMS purchasing and the MBE program.

Second, DMS has a history of including agencies in its rule development and rulemaking efforts. Informants who had worked in DMS reported that the proposed rules that they saw come through had been preceded by at least one special meeting with procurement directors and bureau chiefs in the other agencies. These relationships between procurement officials allowed for successful snowball sampling. This snowball sampling allowed me to both identify additional informants and alleviate some fears about the information that they would be sharing.

Of the 22 individuals who had been contacted through email, 8 responded, 3 of whom declined to participate. Through these 5 initial individuals—who had experience in 7 different agencies—an additional 12 were identified and agreed to be part of the sample. The 10 male and 7 female purchasing professionals in the final sample had worked across 15 different agencies with varying functional purposes and had a combined total of 334 years of experience in procurement—an average of 24 (23.86) years of service with a minimum of 12 years and a maximum of 37 years. Fourteen had worked in more than one agency and 10 had worked in more than two.

**Interviews**

The interviews were semistructured, tied to a standard interview protocol with extensive probing and follow-ups. Interviews lasted anywhere from 55 min to 3 hr. The general interview guidelines provided sufficient flexibility to adjust to different interviewees, agency contexts, and periods of time. All but three informants worked at more than one agency over the course of their time in Florida purchasing. Depending on informant backgrounds, questions were tailored to explore their experiences with MBEs across different agencies, at different places in the organizational hierarchy during different periods of time.

Interviews started with global questions about the nature of Florida procurement and changes to general purchasing policies and procedures. These questions enabled the interviewer to get an idea about the context(s) within which the interviewee had been embedded. The remainder of the interview focused on MBE policy changes. In particular, each interviewee was asked: (a) How MBE procurement policies had changed at the administrative level during their tenure in Florida purchasing? And, (b) what they would identify as the significant or high magnitude changes or policy shifts to Florida MBE policy within agencies? These questions were intentionally focused on changes at the agency level because it is these changes that informants were the most qualified to answer. In essence, these questions isolated a few relatively important MBE changes as bureaucratic response to trace the pattern of their development over time and in response to a given political signal.

Case studies reliant on interview data can suffer from inaccuracies or informant biases due to poor recollections or changes in perception over time (Yin, 2003). Individuals may forget the specific dynamics of events or may discuss events over time in a way that influences their perception of those same events (Yin, 2003). It is for this reason that multiple sources of evidence were used (King, Keohane, & Verba, 1994; Yin, 2003). Interviews were supplemented with
legislation, executive orders, media accounts, and internal policy statements. This allowed for the events, as explained here, to be substantiated by multiple sources and from multiple perspectives. It is also important to point out that the stories and insights revealed in this study were made possible by the fact that informants had experienced events over time and had extensive institutional knowledge. Without conducting a case study of this sort, the events revealed here might not have come to light.

**Data Preparation**

Transcripts were coded based on informant accounts of significant policy change in the MBE program. Each individual identified at least one significant policy change related to MBE preference policy. Overall, purchasing professionals gave robust accounts of three significant policy changes, which were discussed by a high margin over the others that were identified. Fifteen informants were working in state procurement during all three policy changes. The first policy change (occurring 1985) was identified by 86% of informants who were working for the state during that period. Two of the policy changes (occurring in 1991 and 1999) were identified by every informant who was working for the state during those periods. Transcripts were broken into separate accounts of each significant change (Given, 2008; Strauss & Corbin, 2007). Initially, accounts of the same change from each individual were kept together to ensure that quotes from the same informant were not confused with those from different informants. Each account of change was thoroughly examined to ensure that interviewee accounts matched the correct significant policy change and that the chunk that had been removed from the transcript contained the full story. This separation of accounts by individual was for organizational purposes only. Interview data of each account was also supplemented with content analysis of administrative rules, statute, executive orders, and media reports. In the data analysis and results section, individual accounts were combined for each policy change in order to provide a more robust picture of how informants perceived changes in relation to one another. Over the 25-year period in MBE preference policy examined here, the attention given to these three changes in the aforementioned text sources suggest that they are indeed significant.

**Data Analysis**

Based on patterns in interviewee accounts, particular attention was paid to two factors in relation to each significant MBE preference change: (a) the signal that prompted the change (and, by continuation, the vehicle for that signal [i.e. legislation]); and (b) the operational characteristics of the change at the agency level. Table 1 shows both the contents of the vehicle for the political signal and the contents of the corresponding agency response (DMS’s response). In coding each change and iterating between the data, literature, and developing theory (Strauss & Corbin, 2007), it was apparent that interviewees characterized each of the changes in similar ways. They identified each policy change with a political signal that was embedded in legislation or executive order. They evaluated both the signal and DMS’s response to the signal (policy change), describing the contextual factors and their perceptions of decision-maker intent associated with both. This evaluation of agency response to the signal is operationalized here as the nature of response.

Interviewee accounts suggested that signals were evaluated by (a) whether the vehicle for the political signal was professionally appropriate or feasible and (b) whether the policymaker intentions behind the signal were perceived to be genuine. The genuineness or disingenuousness of policymaker intent is defined by whether informants believed that elected officials were keeping things back from the public in making their policy choices. In keeping things back from the
### Table 1. Major Policy Shifts in Minority Business Enterprise Purchasing.a

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<tr>
<th>Description of shifts</th>
<th>Signal language</th>
<th>Response language</th>
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<tr>
<td>Implementation of an MBE spend goal of 15% of total contract monies with standards for good faith effort compliance</td>
<td>Each agency ... is encouraged to spend 15 percent of the moneys actually expended for commodities, contractual services, and construction during the previous fiscal year ... for the purpose of entering into contracts with certified minority business enterprises (Florida Statute, ch.287.042(4)(f), 1985)</td>
<td>For the purpose of determining whether a state agency has made a &quot;good faith effort&quot; to comply with the fifteen (15) percent minority business enterprise goal ... the Department shall consider the following factors:</td>
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<td>Factors in determining good faith effort:</td>
<td>[The response listed verbatim the four factors identified in the signal and the following]</td>
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<td></td>
<td>1. Whether the agency scheduled presolicitation or pre-bid meetings for the purpose of informing minority business enterprises of contracting and subcontracting opportunities.</td>
<td>7. Whether the agency established a list of [items and services] that could be provided by MBEs.</td>
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<td>2. Whether the agency provided interested minority business enterprises or minority persons with adequate information about the places, specifications and requirements of contractors or the availability of jobs.</td>
<td>8. Whether the agency divided bid invitations ... to facilitate meeting MBE procurement goals.</td>
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<td>3. Whether the agency effectively used ... resources of available minority community organizations ... that provide assistance in the recruitment ... of [MBEs]</td>
<td>9. Whether the agency implemented specific initiatives to encourage MBE participation in its contracting program.</td>
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<td>4. Whether the agency provided written notice to a reasonable number of [MBEs] that their interest ... was being solicited in sufficient time to allow ... [sufficient participation]. (Florida Statute, ch.287.0945(3)(a))</td>
<td>10. Whether the agency implemented procedures for participation by MBEs on purchases of $2500 or less.</td>
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<td>An agency may reserve any contract for competitive bidding only among certified minority business enterprises...(Florida Statute, ch.287.0962(4))</td>
<td>11. Whether the agency implemented procedures of waiver of bonds for construction contracts ... for competitive bidding only among certified MBEs.</td>
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<td>12. Whether the agency implemented procedures to determine MBE responsiveness to procurement solicitations.</td>
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<td>13. Whether a senior level employee ... was designated in the agency as a minority enterprise assistance officer ....</td>
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### Table 1. (continued)

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<th>Description of shifts</th>
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<th>Response language</th>
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<tbody>
<tr>
<td>Mandatory submission of MBE utilization plan to newly created MBE Assistance Office that would determine good faith effort to comply</td>
<td>Each agency shall ... adopt a minority business enterprise utilization place for review and approval by the Minority Enterprise Business Assistance Office.</td>
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<td>(Florida Statute, ch.297.0947(1))</td>
<td>14. Whether the agency negotiated in good faith with interested minority business enterprises or minority persons, not rejecting minority business enterprises or minority persons as unqualified without sound reasons based on a thorough investigation of their capabilities.</td>
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<td>The Minority Business Enterprise Assistance Office shall ... determine what constitutes a &quot;good faith effort&quot; for purposes of state agency compliance with the 15-percent minority business enterprise procurement goal ... [good faith effort was defined by four criteria in another section of the statute] (Florida Statute, ch.287.0945(3)(a)1-4)</td>
<td>15. Whether the agency utilized Florida [MBEs] (Florida Administrative Code, ch.13-8.003, 1986)</td>
<td>A minority business utilization plan should include:</td>
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<td>1. By category ... the estimated total procurement dollars spent with minority business enterprises during the previous fiscal year; the amount projected to be spent with minority business enterprises during the current fiscal, and the amount projected to be spent with minority business enterprises during the next fiscal year.</td>
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<td>2. A description of the methods and procedures to be implemented to meet the 15% goal</td>
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<td>(a) Targeting bid solicitations to MBEs.</td>
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<td>(b) Reserving contracts for competitive bidding only among contractors who agree to utilize certified MBEs as subcontractors</td>
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<td>(c) Dividing large contracts into small units to ... for MBEs, where feasible (Florida Administrative Code, ch.13-8.002, 1986)</td>
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<td>MBE spend goal change to formulaic percentages for each race category across industry categories</td>
<td>The overall spending goal for each industry category shall be subdivided as follows:</td>
<td>1. The agency dollar base for each industry will be the actual year-end expenditures for the previous fiscal year less the amount of all approved exclusions</td>
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<td>a. For construction contracts: 4 percent for black Americans, 6 percent for Hispanic Americans, and 11 percent for American women.</td>
<td>2. The [MBE] Office may exclude funds from the base amount...The Office will provide a list of exclusions that have been approved by the Office and that are applicable to all agencies. The Office will approve additional agency specific exclusions on an annual basis.</td>
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<td>b. For architectural and engineering contracts: 8 percent for Hispanic Americans, 1 percent for Asian Americans, and 15 percent for American women.</td>
<td>3. The Office will set MBE dollar goals within [60] days of all utilization plan request letters... (Florida Administrative Code, ch.13A-2.0021)</td>
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<td>c. For commodities: 2 percent for black Americans, 4 percent for Hispanic Americans, 0.5 percent for Asian Americans, 0.5 percent for Native Americans, and 17 percent for American women.</td>
<td>For the purpose of determining whether a state agency has made a &quot;good faith effort&quot; to comply with [MBE goals]...the agency shall receive credit only for funds expended within an MBE's specialty area... (Florida Administrative Code, ch.13A-2.003)</td>
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<td>d. For contractual services: 6 percent for black Americans, 7 percent for Hispanic Americans, 1 percent for Asian Americans, 0.5 percent for native Americans, and 36 percent for American women.</td>
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In determining the base amounts...the [MBE] Office shall develop, by rule, guidelines for all agencies to use in establishing such base amounts. These rules must include...a deadline for the agencies to submit base amounts...and procedures for adjusting the base amounts (Florida Statute, ch.287.042 (4)(f)(1)-(3), 1991)
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<td>1999 shift&lt;sup&gt;b&lt;/sup&gt;</td>
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<td>Removal of MBE goals and set-asides</td>
<td>The use of racial and gender set-asides, preferences and quotas is considered divisive and unfair by the vast majority of Floridians, produces few, if any, long-term benefits for the intended beneficiaries.&lt;br&gt;a. It is the policy of my Administration to provide equal state contracting opportunities to all qualified businesses, to prohibit discrimination in contracting because of race, gender, creed, color or national origin, and to promote the full realization of equal contracting opportunities through a positive, continuing program in each executive agency and the Office of the Governor.&lt;br&gt;b. ... Any law or administrative rule requiring or allowing the use of racial or gender set-asides ... in state contracting shall be brought to the attention of my General Counsel. (Bush, 1999)</td>
<td>The present goal system is deceptive and too easily allows the State to give the inaccurate perception that minority businesses have received fair and equal opportunities...The measure of success—total dollars actually spent—provides a much more accurate gauge of how the State is performing in this area. And it is this measure by which we intend to succeed, as we seek to increase the total dollars actually spent with minority firms each year. (Bush, 1999b)</td>
</tr>
<tr>
<td>Governor’s new monthly meetings</td>
<td>Procurement agents toil in relative obscurity ... my office has identified over 100 key procurement agents in my agencies ... these agents will soon report directly to me to their agency heads the amount of minority business spending for which they are personally responsible, using the new, more accurate measurement of minority business spending that DMS will implement. (Bush, 1999b)</td>
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Note: <sup>a</sup>The statutory and administrative language excerpted in this table were chosen to give readers an idea about the relationship between the signals and response. Please contact the author for the language of the signals and agency response in their entirety. <sup>b</sup>There was no formal agency response to the 1999 shift, which is why this portion of the table has no information about response.
public, informants perceived that there was dishonesty related to the policy choices of elected officials.

The nature of response was evaluated along three different dimensions: (a) whether rulemaking took place; (b) whether the agency compliance guidelines were perceived to be specific; and (c) the degree of implementation discretion given to agency actors as perceived by informants. Both the specificity of compliance guidelines and degree of implementation discretion in the response are defined in relation to the policy choices of the elected officials. Given their technical knowledge and expertise, informants have expectations of the type of guidance that should be formally given by DMS in implementing the preferences of elected officials. Thus, individuals assessed DMS’s guidance to agencies concerning how to comply with the law being implemented based upon the specificity of the compliance guidelines and their expectations of what sort of guidelines should have been given. Some informants expressed that they did not know how to come into compliance with the law as it was intended by political principals.

The degree of implementation discretion in the agency response is defined by how much flexibility informants felt they had in achieving the goals and outcomes of the MBE program. MBE programs are based on specific performance metrics related to increasing state contracting with minority businesses. However, the strategies that agencies are able to use in meeting these outcomes and meeting goals are significant because they can result in more or less actual contracting with MBEs. The more flexibility that agencies have in developing strategies to meet MBE goals, the more implementation discretion informants perceive that they have.

Results and Analysis

1985: The First Significant Change in MBE Policy

The first significant MBE policy change identified by informants was actually the first MBE policy to be enacted at the agency level. Interviewees identified two particular operational changes. The first was the MBE spend goal of 15% of total contract monies. The second was the mandatory submission of an MBE utilization plan to the newly created Minority Business Enterprise Assistance Office. From this utilization plan, the new MBE Office would judge whether agencies were putting forth a good faith effort to comply with the MBE spend goal.

The vehicle for the signal. This change was prompted by the Florida Small and Minority Business Assistance Act of 1985 (1985), which amended Florida Statute Chapter 287, Procurement of Personal Property and Services (1985). This act was significant because it was the first in the state to identify the survival of minority businesses as “central to the overall welfare of Florida’s economy.” The statute governing the 1985 shift gave the Division of Purchasing the responsibility for developing procedures to enhance state contracting with MBE firms and to encourage each agency to spend 15% of their procurement budgets with MBE firms (Florida Statute, ch.287.042(4)(f), 1985). Each agency was instructed to produce a Minority Business Utilization Report documenting its good faith efforts to achieve the MBE goal. The legislation listed four criteria defining “good faith effort” (Florida Statute, ch.287.0947 (1)). The report was to be submitted to the newly created MBE Assistance Office (see Table 1 for the relevant contents of the 1985 statute). The Office was given rulemaking authority to assist agencies in meeting MBE spend goals and to develop additional criteria for determining good faith effort (Florida Statute, ch.287.094 (3)(c), 1985). This signal embedded in the legislation is characterized as a shared signal because it was sent by two political principals—it was passed by the Legislature and signed by the Governor (Wood & Waterman, 1993).

Evaluating the signal. In characterizing the political signal that prompted the change, interviewees reported that the intent of lawmakers appeared to be genuine and that the policy
specifics embedded in that signal were moderately feasible. As evidence of this genuineness, interviewees cited trends and policies aimed at minority advancement and their perception that Florida politicians wanted to be part of that advancement.

This was reinforced by the fact that, the Legislature chose what appeared to be a rather arbitrary yet “reasonable” MBE preference goal. None of the informants who worked for the state during this period could identify where the specific amount of 15% came from. “Well, the first serious one [the first goal] that I remember as important was the 15%, which really was just pulled out of the air. Nobody knew where it came from.” Another informant likened the choice of the 15% to the children’s fairytale, *Goldilocks*:

When the program was set up in ’85, the goal was fifteen percent of all purchases should go to minority vendors. And nobody knows where the number came from. I guess that was back in the days when legislators compromised and somebody probably thought the number should be zero, and maybe others thought it should be twenty or whatever, and they thought, “Well, we’ll take fifteen. It’s not too big. It’s not too small.” Like Baby Bear’s porridge or something, it was just right.

The point made by interviewees was that, the 1985 legislation, while not ideally designed, was intended to send the message that the state wanted to play a role in the advancement of minority interests.

The informant with the most seniority and knowledge of the MBE program explained the 1985 statute in the following way: “The State program was heavily influenced by what was going on at the time in the federal government. I mean, now, the federal government had a program that started in the late ’70s, early ’80s. Theirs was 10% of spend at the time alright. And, you know, in 1985, when the Legislature passed this program, it established those goals, I think, to catch up.” Another commented that, “Well, you know the Democrats were pretty responsive in these matters and [the Governor] came in and wanted to catch up with the rest of the country.” Yet another underscored the intent behind the signal in the following way: “Well, [the Governor] may have been a politician, but I still think he cared about these issues.”

All of the interviewees employed with the state in 1985 connected the legislation with the election of Tallahassee’s first Black mayor. “We had recently elected a black mayor here in town, so this big caucus of elected officials came down. Oh, and, you know, we got lots of attention and people were interested in serious change I think.” Although no one mentioned him by name, informants were referring to Mayor James Ford, who was elected the first Black mayor of Tallahassee in 1972. He served until 1986, after which he played a significant role in North Florida developing local employment initiatives aimed at employing Blacks (Barnes & Roberts, 2000). Although 13 years had elapsed between the 1985 shift and Ford’s election, one can speculate that the election of the first Black mayor had a normalization period wherein, although he had been elected 13 years earlier, it was still a novel occurrence in the minds of individuals. Another discussed the appointment of “Wally York, a Black man, to the Department of Labor and Employment” adding, “And there was just more influence and care about minorities at that time.” Overall, informants associated the actions of elected officials with a desire to move state purchasing toward the larger trends of racial inclusion and diversity.

**The agency response.** The DMS responded to this signal by engaging in rulemaking. Other options for response would have been to put out policy statements or internal memoranda, which do not require a public comment period and generally require fewer resources (Kerwin, 2011; Yackee & Yackee, 2010). Table 1 contains the contents of the response—the administrative rules outlining the 15% MBE spend goal and the development of a MBE Utilization Plan. Compliance guidelines were laid out with 15 different procedures through which agencies could show that
they were making a “good faith effort,” as identified in the legislation, to meet the 15% goal. As the contents of the response in Table 1 indicate, it was mandated that the MBE Utilization Plan divide MBE spending by category, identify past and projected spending and specifically describe methods and procedures used to meet the 15% goal.

The nature of the response: Specificity of compliance guidelines and discretion. In discussing the nature of DMS’s efforts to implement the 15% MBE goal and the mandated MBE Utilization Plan, purchasing professionals depicted the compliance guidelines outlined in DMS’s rules as being specific and less discretionary than the other shifts.6 As evidence of specificity, informants cited DMS’s relatively detailed instructions and support in the face of what was perceived to be vague and “enigmatic” legislation by virtue of the fact that no one really knew how the 15% goal had been determined.

Although the 15% determined by the Legislature was perceived to be arbitrary, informants made sense of DMS’s support for the legislation through specific rules and policies as making an effort to guide agencies in this new implementation effort. One procurement official remarked, “The trend toward minority preference was huge. I don’t know where any of that stuff came [from] but the agency knew it was coming and was already in the process of preparing something.” In explaining DMS’s efforts to support the rules and program, a number of informants recounted that to get agencies involved, DMS would call the purchasing people together and “walk us through the implementation process. We’d ask about good faith effort. What’s permissible and not. Stuff like that.” Another commented on the early activity of DMS in getting enough vendors so that agencies actually had MBEs with which to do business: “I think the DMS Minority Office, in the early years, did a phenomenal job reaching to agencies—and vendors and, you know, teaching them how to do business, teaching them how to respond to bids, helping them, guiding them. They did that for us too.”

Moreover, as evidence that the rules had substantive effects, informants cited the considerable change that DMS implemented in the face of what was recognized to be the undertones of racism and institutionalized purchasing practices that were difficult to change. One respondent recounted that when the program was first started, “One agency had put responsibility for it [the MBE Program] in its so-called human rights office, not in the purchasing office—probably because they didn’t trust the white purchasing officers, with some reason, to carry out the program.” In other words, there was suspicion that racist attitudes would get in the way of proper implementation of the MBE rules. Another described that 5 years after the implementation of the 1985 preferences he was transferred to head of purchasing in an agency that had never achieved its goals.

When I transferred, [agency name omitted] had file cabinets full of documents attesting to their outreach to minorities to show their good faith effort. They were requiring each office in the . . . to send in a memo each week describing what outreach efforts they had made to minority vendors for their needs . . .

They suggested to me that I continue and that I take charge of their inventory of these documents of good faith effort. I told them, “I’m not going to continue that. We’re going to end that immediately. I don’t want these documents.” “Well, what should we do with them?” . . . “We’re not going to have to document good faith efforts.” “Why not?” “Because we’re actually going to meet the goals of the program.” . . . And of course we used the tools the law gave us—set asides, price preference, and required minority participation.

The implication, of course, is that some agencies hid behind the good faith efforts rather than working to achieve MBE goals. Additional stories suggest that this was, in part, due to undertones of racism within agencies.
In a number of cases, purchasing agents used the specificity of the compliance guidelines outlined in the rules as a sword to enforce preference purchasing when others would not. The following story illustrates the mindset that DMS was faced with when it developed the MBE preference rules.

Well, one year we achieved our goal fairly early and I announced that at a staff meeting. And [name omitted] was at the staff meeting. So he came up to see me later and he said, “I understand we met our minority goal this year.” I said, “That’s right.” He says, “So I don’t have to call anymore minority vendors when I need something done, do I?” I said, “No, that’s wrong. See, that would be discriminating. What we’re not going to do anymore since we met our goals is, we’re not legally entitled to use price preferences or set asides. So we’re not going to do that. But you absolutely must call minority vendors . . . You can’t exclude people because they’re minority.” “Oh.” Well, he was disappointed. These affirmative action programs didn’t drop out of thin air. Racism was the cause.

The story above illustrates that the specificity of the rules acted to limit discretion so that agency actors would abide by the preference rules. As one individual commented, “I think a lot of resistance to the MBE program initially came from racism—in other words, from white purchasing directors and purchasing agents not wanting to do things designed to help minorities.”

There were clearly some challenges associated with the specificity of the rules and the limited discretion allowed. “We had to spend this much. And they put ya on the naughty list if ya didn’t. So to meet a goal, you were allowed to do set-asides. So we would do set-asides.” Informants described 15% as “that magic number.” The MBE policy emerged so suddenly and was so drastically different from anything that agencies had done before that, while it was not perceived as unreasonable in and of itself, there certainly was a learning curve.

As revealed during several interviews, the challenge was that, not all industries had sufficient competition to do set-asides. Furthermore, the relationships that purchasing agents had built with vendors over time were disrupted. Nonminority vendors who had an ongoing relationship with the state were finding the contracts that they had once been awarded now going to minority vendors because of the introduction of preferences and set-asides. “The non-minorities boo-hooed and screamed and yelled and gnashed their teeth because it hit a lot of markets.”

The newness of the MBE program, coupled with the limited discretion granted to purchasing personnel, created additional problems. The introduction of racial and gender preferences into state purchasing brought numerous inexperienced vendors who were unable to meet the demands of doing business with the State and yet submitted bids. However, a vendor’s low bid, coupled with their minority status, gave them an advantage in the process. This created a number of challenges.

As one informant lamented, “It’s too bad, but one company comes in, and under-bids and doesn’t know what they’re doing.” Another recounted a story where a minority vendor was “low-balling” bids for cleaning services: “She had her husband down there cleaning the entire basketball facility every night . . . the athletic department basically told us, ‘We will kill you if she wins again.’ She didn’t win. We had to rewrite it [the bid solicitation] so that we probably paid more.”

The implication here is that, although the relatively limited discretion had benefits, it also put purchasing agents in situations where they were contracting with vendors for poor quality goods and services. Alternatively, as the case above illustrates, procurement agents had to readjust contract specifications to prevent certain vendors from winning bids. In the process, this may have caused the state to overpay for goods and services.

The story above illustrates the frustration that many procurement directors faced. They walked a fine line in terms of utilizing responsible purchasing practices while also implementing minority preferences. Although, this might have discouraged the use of preferences, informant
comments regarding the limited discretion and specific compliance guidelines suggest that this did not occur.

1991: The Second Significant Shift in MBE Policy

The second shift in MBE policy described by informants occurred in 1991. Operationally speaking, the particular change that interviewees identified was the shift of the MBE goals from 15% of total contract monies to formulaic percentages out of total contract monies for each race category across different industries—referred to as MBE industry dollar goals.

The vehicle for the signal. This shift was prompted by legislation amending Florida Statute Chapter 287, Procurement of Personal Property and Services. The 15% MBE spend goal made in the 1985 statute was replaced with very specific goals identifying the percentage of contracting dollars that agencies should spend on MBEs for each race/gender category within each industry. The legislation also specified how agencies were to go about determining MBE industry dollar goals (Florida Statute, ch.287.042 (4)(f)(1)-(3), 1991). The above legislation is characterized as a vehicle for a shared signal because it was sent by two political principals—it was passed by the Legislature and signed by the Governor (Wood & Waterman, 1993).

Evaluating the signal. In characterizing the political signal that prompted the change, respondents reported that lawmaker intentions appeared to be disingenuous and that the specific goals set out in the legislation in which the signal was embedded were infeasible. As evidence of this disingenuousness, informants cited what they perceived to be the Legislature and Governor’s dishonesty in relying on a racial disparity study (which they used to develop the 1991 goals) that used faulty methods. The change from a flat 15% to formulaic, percentage-based goals was prompted by a Supreme Court decision, Richmond v. J.A. Croson Co. (1989) in which the Court held that “generalized assertions” of previous racial discrimination do not justify the use of “rigid” racial or ethnically based quotas for awarding public contracts.

In this decision the Court specified the methods on which racial disparity studies needed to be based to justify the use of MBE preferences. In relying on the improperly conducted disparity study, informants inferred that, had the statute gone before a court, it would have been struck down as unconstitutional (see Martin, Berner, & Bluestein, 2007). Even more importantly, informants perceived that, by relying on this disparity study, elected officials were flouting the law.

Virtually every informant could explain the Croson decision and was aware of the circumstances under which governments were allowed to use racial set-asides:

The Croson decision held that, if governments wanted to use racial set-asides or preferences, they had to complete a disparity study . . . disparity study they are supposed to identify businesses in a geographic area that are “ready, willing and able” [accompanied by quotation hand signals] to perform the work in a particular industry. That’s why the statute uses those crazy percentages for each race group in different industries. Those are the percentages that Florida’s disparity study found. But the Florida study was BS, they didn’t do it the way the Court said.

All informants who discussed the disparity study were familiar with its methodological problems. It was suggested that the Legislature intentionally chose the consulting firm, KPMG, to conduct the disparity study because the firm was well-known for advocating for the use of more set-asides:
One of the problems with the original KPMG survey—which I think they had in the drawer when they were hired—was that they counted businesses that had not been developed because of discrimination, so these people never started doing business. They [KPMG] counted them. Well, of course Croson is ready, willing and able.

In other words, both elected officials and KPMG were perceived as having an agenda that they wanted to disparity study to support. This is what the informant quoted above was referring to with the comment that KPMG already had the study “in the drawer when they were hired.” Thus, not only was the Florida disparity study discredited by informants because it counted individuals in minority groups across the state without taking into consideration whether or not these individuals were actually capable of doing business with the state, it was also perceived to be a product of political bias. The methodological problems reinforced the perception of disingenuous policymaking.

An examination of the Croson (1989) decision verified the basic facts presented above. The key was that the minority-owned businesses identified in the study had to be “ready, willing, and able” to do business with the state. The latter criterion was the problem that informants identified with Florida disparity study. As one informant suggested:

It’s like saying 12 percent of the population of the State of Florida is African American. But if you survey brain surgeons, would you expect 12 percent to be African American? Well, you can’t answer the question for the population. You have to know, of the people who have had training as a surgeon, what percentage are African American?

The problems with the disparity study were pervasive and tainted the perceptions of purchasing personnel. Four interviewees in separate agencies actually referred to the 1991 goals in statute as “bogus goals.” One commented, “We all knew the disparity study was crap and when they put those bogus goals in the statute, it was even worse.” Another explained, “Anyway, the ’91 study came up with those bogus goals.” Yet another told the following story.

Yeah—oh no, the law is based on—the law says that 50.5 percent of contractual services have to go to women, and the huge numbers that are in there—but those numbers were based on businesses . . . that never opened, because they assumed that women and minorities were discouraged from going into business for themselves. That’s really hard to do business with those people. KPMG—they came down and I met with them. They didn’t know anything about purchasing. I don’t know what in the world—we were just like, “Oh they’ve got that thing [the disparity study] sewed up, and now they’re building it up from behind.” We saw the numbers—those bogus goals—and we just laughed. It’s just hysterical.

The repeated use of the term “bogus goal” is noteworthy here. Purchasing professionals are a highly networked group of individuals who may have constructed the notion of bogus goals among themselves through their interactions with one another.

The agency response. DMS responded to the statutory signal by engaging in rulemaking. As the contents of the response in Table 1 show, the newly adopted rules removed most of the agency guidelines on determining good faith, supplemented instructions on how to complete the MBE Utilization Plan and developed additional information about the determination of MBE industry dollar goals.

The nature of the response: Specificity of compliance guidelines and discretion. In discussing DMS’s efforts to implement the new goals, purchasing professionals depicted the compliance
guidelines outlined in DMS’s rules as nonspecific and highly discretionary. As evidence of the nonspecific nature of the rules, interviewees reported that DMS rules gave little guidance on how to meet the detailed and demanding racially based goals identified in the statute. Many informants pointed out that the rules did not change although the goals changed considerably. DMS’s response actually removed rule language on compliance that has been there before 1991. “I told him, ‘This is outrageous. Nobody can meet these goals . . . There aren’t even this many Hispanic architects in the State.’” Another recounted telling the purchasing director of her agency, “Oh, don’t be ridiculous, we can’t meet those goals.” And yet another described the goals as being “gigantic.” The frustration with what were perceived to be infeasible goals was accentuated by the lack of guidance provided by DMS. As one manager explained, DMS left agencies “hanging out on our own to figure out how to implement these things within our agencies.”

As evidence that the agency’s response allowed for high levels of discretion, informants cited the extreme flexibility that agencies had to alter their MBE industry dollar amount. Every informant reported having to ask the MBE Office to alter their industry dollar amount to meet the statutory goals. One interviewee described the problem in the following way:

And at that time [after the 1991 statute], the problem that they were having with Florida’s program was that they were trying to establish the goals based upon total dollars spent . . . What was more logical to do, and what we did was that we looked at the agency’s total dollar spend—total budget dollars and backed out those things that had no contract opportunity to the point of, okay here is what you really spent on contract obligations. Now, we’ll take that percentage of this amount, which then basically really transformed the entire program [and] became now reachable goals by the agencies to do.

Other informants suggested that, to meet the goals, they intentionally altered the MBE industry dollar amount. “We didn’t have as much as heartburn about the goals as [other agencies] . . . We used to get our goals so that we were like 500 percent of our goal, and I would tell people, ‘Shhhh. It doesn’t mean anything. It’s meaningless, because the things you’re allowed to delete and all that.’”

Respondents pointed out that the DMS purchasing rules could have specifically identified exclusions to determine the MBE industry dollar amount rather than relying on the discretion of agencies and the MBE office. As indicated by the stories that were recounted, this discretion resulted in some manipulation of the MBE industry dollar amounts. One informant described how, after the 1991 change, she frequently had to adjust the agency budget to exclude certain items so that the MBE industry dollar amount would be lower and the goals easier to achieve. “Sometimes we met our goals, and then sometimes they changed and we had to look around and see what we could do with the budget.”

Another explained that, “there was no way any state agency could possibly—they had to get into the budget and start taking out appropriated and discretionary spend, contracts and grant funds. They had to get in there and do that. There was no other way.” And yet another recounted a story where her boss approached her concerned about meeting the MBE goals. “I was like, ‘Look, don’t worry about it. Look, we can pretend to comply, or we can whatever, we don’t have to fight this. So, we went along, we reported. Everybody did different things to look like they were complying. I was particularly good at it. I had done it for years.” She went on to say, “You know, I would tell [my supervisor], ‘Don’t look too deep, and don’t brag. Just put it [the MBE utilization report] in.’”

The goal achievement tactics were widely discussed to imply that the 1991 rule changes allowed for significant discretion. Many even used the same language to describe how they
warned their agency heads not to “brag” about their success in meeting the MBE goals because of the compliance tactics that they were using. “I said to him (the agency head), ‘Please do not brag because you could just blow this.’ But it was true of the whole state,” one informant said in describing how the agency decreased the MBE industry dollar amount to decrease the amount that needed to be spent with MBEs to meet the statutory percentage goals.

1999: The Third Significant Shift in MBE Policy

The third shift in MBE policy described here occurred in 1999. The entire sample of purchasing professionals in this study reported that the changes made to Florida procurement in 1999 were the most significant in the history of the program. Operationally speaking, the particular changes that interviewees identified were the prohibition set-asides and goals and the Governor’s heightened involvement in public procurement through newly mandated monthly meetings with purchasing directors and agency heads.

The vehicle for the signal. This third shift was prompted by Executive Order 99-281 also known as One Florida, which forbade the use of any set-asides and vowed that agencies would now keep track of the MBE spending with raw dollar amounts. The Governor restructured the chain of command so that procurement agents in the cabinet agencies would report directly to him and their agency head in regularly scheduled meetings.

The literature would characterize the above legislation as an executive signal (Wood & Waterman, 1993) because it originates solely with the Governor. Furthermore, it is important to point out here that the Executive Order directly contradicted the 1991 statutory MBE goals and the corresponding administrative rules. In other words, the adoption of the Executive Order meant that there were now conflicting political signals governing the MBE program.

Evaluating the Signal. In characterizing the political signal that prompted the change in MBE policy, respondents reported that the intentions of the Governor appeared to be disingenuous and that the goals accompanying that change were infeasible. As evidence of this disingenuousness, interviewees cited the Governor’s public pretense that goals were no longer enforced while he was privately pressuring agencies to meet his own goals and the expansion of the definition of MBE spend to include contracts with noncertified MBEs. This perception of disingenuous was also influenced by the fact that the Governor’s Executive Order was perceived as part of a larger effort to get rid of all racial preferences and affirmative action programs in the state. One Florida also got rid of racial preferences (e.g., affirmative action) in the college admissions process in Florida (Bush, 1999a; 1999b). Informants perceived that, in the push to privately increase contracting with minorities, the Governor was attempting to show that racial preference policies were unneeded in all aspects of government.

Many informants discussed the Governor’s desire to increase MBE spend so that he could prove that racial preferences and set-asides were not necessary and that his One Florida Initiative was a success. “When we started enforcing One Florida and our report of spending went down, and they [the Governor’s office] said, ‘Why did it go down?’ And, I’m like ‘Okay, duct tape me to my chair for a while. What do you mean why did it go down?’” The informant went on to say, “Of course it went down, we couldn’t do set-asides.” Another recounted something similar: “When One Florida reporting came in, I don’t think it [MBE spend] was any better. They wanted it to be, but then they saw that—when they did away with it [set-asides], the spending went down. I told general counsel, ‘I’m sorry, you’re surprised?’” The trouble, as expressed by many, was that the goals were considered to be unrealistic. One informant explained, “The problem is that they were just—it was like zoop, it’s gone,” referring to the revocation of the set-asides. She went on to say, “And then, we’re supposed to meet all these goals, but now we’re not allowed to do any of the things we were allowed to do before.” This perception of infeasibility was
compounded by the fact that in public the Governor was standing by the idea that “the use of racial and gender set-asides, preferences and quotas is generally inconsistent with the obligation of government to treat all individuals as equals without respect to race or gender” (Bush, 1999b) while in private he was setting what were perceived to be MBE spending quotas by mandating that agencies increase their MBE spend from one year to the next.

It was particularly striking that, although the Governor’s expectation of increasing MBE spend from the previous year was not codified in statute or defined through agency rules, those expectations and the mandated monthly meetings between agency heads, purchasing directors, and the Governor were mentioned by every informant—even those whose agencies did not have to attend. The failure to meet the Governor’s MBE spend expectations was said to earn agency heads “a browbeating.”

[The Governor] was abusive with some of his department heads on minority spend . . . The reaction was to just beat up on agency heads. And of course the agency heads come back. And you know how that stuff goes downhill. So they would come to me, and say, “How are we doin’ on minority spend?” I tracked that every month.

The Governor’s demeanor in the meetings had such a profound effect on some purchasing agents that when one informant was asked who he perceived to be the most adversely affected by One Florida, he responded in the following way: “You mean besides purchasing professionals like me that caught flack every day because people had to get minority vendors and bid on things and they couldn’t get them? It did make my job more difficult.”

Other informants shared about the inconsistencies between the Governor’s public and private expectations:

In ’99 or 2000, [the Governor] promulgated his One Florida Initiative, where he said we were not going to do set asides and preferences anymore. And he didn’t change the law. He issued an executive order. We were all told, “All of your discretionary purchases, every-thing $25,000 and below [the threshold below which competitive bidding is not required] you are to see if you can reserve that for minorities. If there’s a minority, we want you to give it to them.

Thus, although set-asides had been made illegal by the Executive Order, purchasing personnel were being instructed to essentially engage in set-asides when purchases were low enough that competitive bidding was not required. Another interviewee commented that, “One Florida may as well have been in statute for how much attention we had to pay to it.” One got the feeling that informants felt that the Governor was being opaque about his intentions and the manner that he was going about implementing his executive order.

Many cited the benefits that the Governor and his allies could receive when agencies increased spend while asserting that racial set-asides were unnecessary. “Who benefitted? Well, the politicians that were able to say that yes, we spent more money this year with minority vendors than last year, which was pandering to their voter base.” Another described the Governor and his political allies—not MBEs—as the primary beneficiaries of One Florida. “I think the primary interest group is the politicians. I don’t know if that’s what you mean but, you know, they do things that will help them get reelected. “

The intent behind One Florida was also perceived as disingenuous because, in an effort to increase MBE spend, the Governor’s office began to allow noncertified, self-reported minority vendors to be included in the MBE spend. By counting noncertified MBEs toward MBE spend, it became easier to increase MBE spend from year to year. The change was perceived as
engineered by the Governor so that he could claim that racial set-asides were unnecessary to increase State business with MBEs but really the standards for the reporting of MBEs were changing. Therefore, comparisons to MBE spending prior to *One Florida* were perceived as misleading.

“One Florida would have never been able to increase spend . . . Had they not suddenly counted non-certified, which we had never done, the numbers would have been pitiful – beyond pitiful. When they’re self-reporting, that means they say, ‘Oh yes, we’re Asian, we’re—whatever. We don’t really know.’” She went on to say, “So, who really cares an awful lot about the minority business program?” Another commented: “*One Florida* is just, I mean, you can count non-certified and certified and the non-certified is self-reporting. Okay? I remember one year when they did it. It looked like we weren’t going to show an increase . . . they decided to report non-certified, which we had never been allowed.”

Another clear problem with reporting noncertified MBEs in minority spend was that there is no independent verification that the MBE is actually a minority because they are self-reporting. In his Executive Order, the Governor reasoned that he wanted to count noncertified vendors because he wanted to acknowledge the breadth of minorities with whom the state was contracting and he saw the certification process as a bureaucratic impediment. However, many saw the move to count uncertified vendors as politically motivated in order to raise MBE spend while publically denouncing and abolishing goals. As one informant cynically commented, “Generally, from the politician’s point of view, it boils down to their perceptions of what will help them get reelected.”

**Agency response.** No rulemaking took place in response to the *One Florida* Executive Order. The agency did not remove the references to the 1991 statutory goals—which the Legislature did not change after the Executive Order was implemented either—nor did it adopt rules to abolish the use of set-asides. In other words, if purchasing professionals looked at the rules or statute independent of Governor’s Executive Order, they would assume that set-asides and preferences were still in place. In referencing the elimination of set-asides and the statutory goals ushered in by *One Florida*, every individual commented on the fact that neither statute nor administrative rules were altered in response to the order. As one purchasing professional noted, “The last big MBE Program change was significant for the lack of rule change.” This suggests that, given the considerable MBE policy change, informants expected that DMS would have a formal response that would show policymakers that they were implementing the changes. Furthermore, the lack of agency rulemaking underscores the larger point that, in the face of conflicting signals, the agency did not want to risk upsetting either the Legislature or the Governor.

**The nature of the response: Specificity of compliance guidelines and discretion.** The failure to engage in rulemaking meant that there was no formal response. Unsurprisingly, without any guidance from DMS, the compliance guidelines were perceived as nonspecific and the implementation discretion was perceived as high. This is because although the MBE program and spending were now being directly overseen by the most powerful actor in state government—the Governor—there was no centralized agency response. One informant described DMS’s failure to engage in rulemaking in this case as an “abdication of responsibility,” because it allowed agencies to use a number of discretionary tactics to meet the Governor’s MBE spending expectations.

The discretion allocated to agencies for meeting goals stood out to many because prior to *One Florida*, DMS was perceived to be the “fulcrum” of administrative agencies in the state. As one interviewee suggested, “I mean, when you’re in a sister agency like we are, we look at DMS as a—they’re our—they’re our father to look to, to ask for or look to for direction.” In other words, the expectation was that DMS would direct agencies on how to use their discretion to fulfill the Governor’s goals.
Three informants characterized DMS as being the “go-to agency” during the 1980s and 1990s. And yet another explained DMS rulemaking in the following way:

In fact, agencies are extremely interested in the rules in the administrative code. And it was very common when we [DMS] would announce a hearing on a proposed new rule to have several agency members come. You have the directive, law or whatever from the politicians. These things are fairly general. They establish entities, organizations, and their scope of authority and detail some of the tasks they’re responsible for—but they usually don’t give a great deal of detail on how those tasks are carried out.

All of this is to say that, by giving no formal, rulemaking response to the Executive Order, DMS ensured that agencies would have a significant amount of discretion in fulfilling the Governor’s MBE spend expectations.

While there was considerable discretion given to agency actors, most informants expressed discomfort with operating under the conflicting signals. The pressure from the Governor, fear of legislative action, and the general political salience of MBE policy made it so that purchasing directors and bureau chiefs felt that their decisions were under considerable scrutiny. In other words, where discretion might have enabled agency purchasing personnel to act with a fair amount of latitude, they actually expressed anxiety around the conflicting because of the risk of upsetting either the Governor or Legislature.

Discussion: A Framework for Understanding Signals and Response

The three major shifts in Florida MBE policy show a distinct pattern of bureaucratic response in the Florida context. Although a political signal prompts each shift, agency actors have discretion to influence the nature of that shift through their responses to the signal. Table 2 provides a structure for understanding the relationship between the signal and the nature of agency response in this context. Agency actors begin by examining whether the signal is shared or conflicting. When the signal is shared, the agency often responds formally through notice and comment rulemaking. When the signal is conflicting, agency actors do not engage in rulemaking because, as a formal method of agency response, they risk alienating or upsetting at least one of the political principals (see Wood & Waterman, 1993). As one informant commented in relation to the 1999 Executive Order, “They never took it out of statute. And they never took it out of a rule. And it was funny. Because the first couple weeks I was over here, I asked, ‘Why isn’t that gone?’ ‘Oh, it’s a political hot potato’—because the minority groups don’t ever want the language removed from statute.” In other words, if the agency had responded to the Governor’s 1999 Executive Order, they would have risked upsetting various members of the Legislature.

While not generalizable, the Florida context generates one viable theory of how agencies weigh their responses to political principals through their policy decisions. In a system of competing principals, bureaucratic actors experience heightened uncertainty regarding which political preference to follow (Krause, 2009; Wood & Waterman, 1993). One way to deal with this dilemma is to not give a formal response. By not engaging in rulemaking, the agency was making a conscious decision to remove itself from decision-making related to the One Florida initiative. This reinforces current frameworks on multiple-principals (Wood & Waterman, 1994) which suggest that response is more likely when signals are shared—sent by two political principals—than when they come from one principal. However, what the study at hand introduces that earlier studies on the principal–agent relationship do not is that the direct pressure

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exerted by one political principal even when signals are conflicting can still have considerable effects on the internal functions of agencies.

In this case, it was the Governor and the Legislature that wanted different things because the Legislature refused to remove the percentage-based formulaic goals from statute and the Executive Order instructed cabinet agencies to ignore those goals. Since rulemaking is a highly public and formalized response to political signals, agencies are careful about whether and how they use their rulemaking authority (Asimow & Levin, 2009; Yackee & Yackee, 2010). Thus, if the signals are shared, there is more certainty and rulemaking is more likely to take place. If the signals are conflicting, there is less certainty and rulemaking is much less likely to take place. This explains the difference between the rulemaking in 1985 and 1991 under shared signals and the lack of rulemaking in 1999 under the conflicting signals.

Once the decision to engage in rulemaking has been made, agency actors evaluate the intent behind the signal and the professional appropriateness and feasibility of the policy embedded in which the signal is embedded. Characterizations of the 1985 signal juxtaposed with the 1991 and 1999 signals indicate clear differences in how the intentions of elected officials were perceived. While purchasing professionals gave limited comments on the policy feasibility of the 1985 signal (the 15% MBE spend goal), their comments on the obstacle of institutional racism and the entrance of Black politicians to political office support the conclusion that the intent behind the 1985 signal was genuine.

In characterizing the 1991 and 1999 shifts, however, informants cited the political payoffs of supporting the signals and the perceived dishonesty in the way that the policies were designed in addition to the infeasibility of the MBE spend goals. It was not just the infeasibility. It was the fact that, in public, elected officials’ signals were perceived one way and in private they were perceived in another way. For example, with the 1991 shift, informants perceived that elected officials had knowledge of the flawed disparity study and supported the formulaic statutory goals nonetheless. With the 1999 shift, the Governor’s public decrying of racial preferences and goals juxtaposed with the enormous pressure to increase MBE spend that was communicated in closed door mandated meetings led to the perception that he was misleading the public.

These assessments of the political signals inform the nature of the agency response. When the intent behind the signal are genuine and the policy is somewhat feasible, the agency response is more likely to have specific compliance guidelines and be less discretionary for agency implementers. When the policy is less professionally feasible and the intent behind the signal are perceived as less genuine, the agency response is likely to have less specific compliance guidelines and allow more discretion for agency implementers. This is because, when elected officials do not appear to have genuine interest in the policy outcomes, agencies are less likely to put the time and effort into creating specific implementation guidelines that provide meaningful instruction to agency implementers (Schneider & Ingram, 1997). Under these conditions, agencies also

<table>
<thead>
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<th>Shift</th>
<th>Signals</th>
<th>Rulemaking (formal response)</th>
<th>Is the intent behind the signal genuine?</th>
<th>Are the specifics of the signal professionally “appropriate” or “feasible?”</th>
<th>Agency compliance guidelines</th>
<th>Implementation discretion</th>
</tr>
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<td>1985</td>
<td>Shared</td>
<td>Yes</td>
<td>Yes</td>
<td>Moderate</td>
<td>Specific</td>
<td>Lower</td>
</tr>
<tr>
<td>1991</td>
<td>Shared</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Not specific</td>
<td>High</td>
</tr>
<tr>
<td>1999</td>
<td>Conflicting</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Not specific</td>
<td>High</td>
</tr>
</tbody>
</table>

Table 2. Patterns Between Signals and Response.
allow more discretion to implementers because there is little political attention to scrutinize the standardization and application of policy. In other words, agency actors recognize symbolic policymaking and respond accordingly (Scholz, 1986).

In creating the 1985 rules, the agency compliance guidelines and implementation discretion were aimed at facilitating meaningful implementation of the MBE program and corresponding goals. In 1991, however, the agency compliance guidelines and implementation discretion were loose compared to the program’s expectations. As the contents of the response in Table 1 show, DMS’s guidelines did not keep up with the program changes. In other words, DMS did not give agencies the guidance to successfully implement the 1991 policy. The case is somewhat different for the response to the Executive Order because no rulemaking took place. This provided the most discretion of all three bureaucratic responses examined here. DMS was entirely absent in the implementation process and agencies were left to their own devices with the Governor’s office serving as the source for standardized policy across agencies.

Overall, the analysis above suggests that, in the Florida context of MBE preference, bureaucracies do respond to political preferences. However, not all responses are created equal nor are they considered equal. Stronger responses, such as rulemaking, formalizing political preferences, and standardizing response across agencies in a way that can draw the attention of political principals. It is for this reason that agency actors are careful in their responses. Essentially, agencies assess the intent behind signals and the policy feasibility embedded in those signals as indicators of how to respond to political preferences. These indicators, coupled with the risk of response heavily influence the manner in which policy is enforced and implemented within agencies. Disingenuous intentions lead to either nebulous agency responses that provide little implementation guidance or to no response, but rather a reliance on the authority of the political principals.

Limitations and Future Research

There are a number of limitations in this study that should be addressed in future research. First, given the limitations of the case study approach (King, Keohane, & Verba, 1994; Yin, 2003), the relationships between the signal and contents of the response that are outlined in Table 2 can only be said to apply distinctly in the Florida context. The theory developed in this section should not be taken to be generalizable until it is tested in multiple and diverse contexts. Second, since MBE policy is centralized and has high political salience, the response process articulated here may not be entirely generalizable. Future research should apply the process through which bureaucrats examine signals and determine response here to test whether other agency types and policy areas follow a similar pattern. Third, the analysis of bureaucratic response here contains subjective data from a specific group of actors not all of whom had worked within the centralized agency (DMS). This is ameliorated by the fact that Florida procurement agents are a highly networked group of individuals who share experiences with one another in both social and professional settings. They appear to develop a common reality, which is evidenced by the common vernacular used by interviewees (e.g., the use of the term “bogus goals”). Fourth, although the thrust of this article has been to provide an account of response from the perspective of agency bureaucrats, in the future, interviews from political actors and government contractors should be conducted. This may help us understand the relationship between political signals as they were intended by elected officials and how the political signals were actually perceived by agency actors. Finally, future research in the area should include the collection of objective data on MBE spend and contract awards regarding policy shifts in order to determine how the responses influence the efficacy of policy.
Conclusion

This study uses a state specific context to build a theory of the relationship between political signals and the nature of response. It contributes to current literature by developing a theory on the strategies and decision-making factors behind bureaucratic responsiveness and the discretionary nature of that response. Bureaucratic agents calculate the costs and benefits of formal and informal responses by evaluating political signals. This suggests that elected officials are not the only politically strategic actors in the principal–agent relationship. Comments by informants support the assertion that bureaucrats are not only more technically savvy than elected officials on policy matters, but that their role in the implementation process allows them to be better politicians (Meier, 2008). This puts the bureaucratic response literature one step closer to determining “when, why and under what conditions [bureaucrats] are responsive” (p. 4). In addition, studying the response strategies uncovered here can further open up the black box of the agency to show the interface between political and administrative institutions that is often elusive in the literature (see Radin, 2009).

This study also expands scholarly understanding of the basic relationship between elected officials and bureaucrats. While principal–agent theory suggests that goal conflict and information asymmetry play a considerable role in the relationship between bureaucrats and elected officials, the symbolic nature and genuineness of the intentions behind political signals appear to also be important. The myth and ceremony (see Meyer & Rowan, 1977) behind political signaling has received some attention (March & Olsen, 1983). However, bureaucratic response, itself, appears to have its own myth and ceremony related to the reporting of outputs (e.g., MBE spend) and the allowance of discretion. In looking at organizational outputs and performance measurement questions, scholars should look to differentiate between implementation strategies that are genuinely intended to deliver substantive outcomes and those that are intended to give the perception that substantive outcomes are being achieved.

This study also illustrates the relationship between the political signals, the nature of response, and the implementation of policy. Disingenuous policy intentions can translate into loose implementation guidelines or bureaucratic gaming. This suggests that, while implementation is officially the purview of agencies, it is heavily influenced by the policy sentiments of political institutions. This is yet another example of how the politics influences administration (see Moe, 1994). Future research is needed to show how public organizations can counteract the bureaucratic frustration with political disingenuousness or policy infeasibility so that policies can be efficacious and implemented with integrity. It is particularly important to find solutions for the implementation problems that arise in such a significant (Pitts, 2011) and controversial issue area as MBE procurement (Arrowsmith & Hartley, 2002).

Another important contribution is the description and analysis of MBE policy itself. Both the archival and interviewee data analyzed here shows the difficulty of legally, politically, and managerially navigating these policies. While perhaps not making the strides that some scholars would hope for (Pitts, 2011), the illustration of Florida’s MBE preference program and its challenges shows that some of the problems with these policies reside in their initial legislation and the manner in which this influences policy implementation.

To conclude, the contextual and theoretical developments in this study provide important research. With scholarly calls for empirically examining social equity policies (see Pitts, 2011) coupled with the growth in contracting-out (Frederickson & Frederickson, 2006), minority preference purchasing is a verdant research area that is not well understood. This study provides basic policy and program descriptions that can provide scholars with a structure for understanding how these programs work. In addition, opening up the black box of the agency to generate testable theory on bureaucratic behavior and responsiveness, as has been
done here, can help scholars understand the role of public bureaucracies as policymaking bodies.

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Notes

1. MBE programs generally include individuals from underrepresented racial groups and women. Some have been expanded to include veterans or disabled vendors.
2. The list was compiled by the DMS. It is notable that Florida purchasing professionals have long tenures, have served in multiple agencies, and have served in multiple positions over different periods of time. There were fewer retirees on the list than had been expected. Interviews and archival research into agency purchasing through policy statements and other internal documents were the only way to verify that this list of purchasing professionals was comprehensive.
3. These 10 agencies included: Department of Education, Department of Management Services, Department of Highway Safety and Motor Vehicles, Department of Children and Families, Department of Health, Department of Fish and Wildlife, Department of Lottery, Department of Corrections, Department of Workforce Innovation, and Commerce Department.
4. In many cases, interviewees jumped back and forth between policy changes in which case it was necessary to carefully connect each change with the relevant respondent descriptions of that change.
5. The 1985 change was from the first MBE preference set-aside, which was adopted by the Legislature in 1982. The 1982 set aside encouraged agencies to spend 5% of all monies spent on contract services with MBEs O.S.D. (1991). Annual Report. In F. D. o. M. Services (Ed.). DMS did not promulgate rules and informants, government reports and media reports suggest that this legislation was not enforced or widely implemented (Florida Attorney General, 1984; U.P.I, 21April 1984).
6. It should be noted that in centralized administrative rule, just as in statute, there is likely to be more discretion allowed because they apply to such a large group of actors engaged in purchasing and contracting across multiple agencies and policy areas.
7. In order to comply with Croson, governments utilizing racial set-asides or preferences had to complete a disparity study identifying the proportion of firms owned by the minority groups identified in statute who could do business with the state in a particular industry—for example, architecture, construction, and so on. If the proportion of MBEs identified for a particular race group in a particular industry was lower than that doing business with the state, then a set-aside could be put in place.

References


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Jessica Terman is an assistant professor at the University of Nevada, Reno. Her research interests are in contracting-out, administrative rulemaking, and regulation and the regulation and management of state and local energy projects.