REAUTHORIZATION
OF
EXECUTIVE ORDER 02 - 05
RELATING TO THE PARTICIPATION OF
MINORITY, WOMEN AND DISABLED BUSINESSES
IN CITY CONTRACTS

BACKGROUND

WHEREAS, the City of Philadelphia is a racially and ethnically diverse city of 1.5 million people, approximately 55 percent of whom represent racial or ethnic minorities; and

WHEREAS, a study completed by D.J. Miller & Associates, Inc. in 2004 ("D.J. Miller Study") of the City's contracting with minority and women owned businesses, found that less than two percent of Philadelphia's contract dollars across all categories of City contracting had been spent with businesses owned and controlled by minorities or women despite the availability of capable minority and women owned businesses in the Greater Philadelphia region; and

WHEREAS, since 1990, the City has, under Mayoral Executive Orders 6-90, 1-93 and 1-03, enacted race-neutral programs intended to overcome discrimination against minority, women and disabled owned businesses desiring to do business with the City through the implementation of various methodologies for issuing and evaluating bids, solicitations and proposals and awarding contracts; and

WHEREAS, it is the policy of the City of Philadelphia to provide an equal opportunity for any business to compete for City contracts and to assure that any contracts using public funds, sourced, administered or authorized by the City, including contracts requiring City Council approval, are not used to promote, reinforce or perpetuate discrimination; and

WHEREAS, the approximately 800 minority, woman and disabled owned businesses certified by the Minority Business Enterprise Council (the "MBEC") are well prepared to compete for and to participate in City contracts on an equitable basis with other businesses; and

WHEREAS, the Constitution of the Commonwealth of Pennsylvania prohibits discrimination on the basis of race, color or gender; and

WHEREAS, the Governor's Executive Order 2004-6, 34 Pa.B. 2685, directs all Commonwealth agencies to achieve an increase in the dollar value and percentage participation by minority and women owned businesses in contracts awarded by the State; and

WHEREAS, Section 8-200(2)(d) of The Philadelphia Home Rule Charter requires that City contracts contain provisions prohibiting contractors from discriminating against or permitting discrimination against any person because of race, color, religion or national origin; and

WHEREAS, in City Fiscal Year 2005, minority and women businesses bidding as prime contractors were awarded respectively, 6.8 percent and 4.1 percent of all Service Supply and Equipment Bids and only .03 percent of City Public Works Bids were awarded to minority businesses and 2.2 percent to women businesses bidding as prime contractors; and

WHEREAS, it is the intent of the City of Philadelphia to create an even playing field which will increase the number of prime contracts awarded by the City to minority, women and disabled owned businesses, as well as increase the overall dollar value and percentage participation by those businesses as subcontractors or joint venture partners on all contracts awarded by the City; and

WHEREAS, the City intends that all City employees engaged in the award of City contracts comprehend the City's policy and mission set forth herein and acknowledge that their job performance will be measured in part by whether they make diligent efforts towards achieving the goals and objectives of this policy.

NOW, THEREFORE, I, John F. Street, Mayor of Philadelphia, by the powers vested in me in accordance with Sections 1-102 and 4-100 of the Philadelphia Home Rule Charter, do hereby ORDER that:

SECTION 1. Reauthorization of Executive Order 02-05

A. Reauthorization of Executive Order 02-05.

The Background as set forth above is incorporated herein by reference. Pursuant to Section 8 of Executive Order 02-05, this Order is hereby reauthorized and restated, as amended herein, for a term of four years commencing September 4, 2006. Further remedial action is required based upon assessment of City of Philadelphia contracting data made available to the Mayor by the Minority Business Enterprise Council. In Fiscal Year 2005, 14 percent of City dollars spent with for-profit businesses went to minority business enterprises ("MBEs"), 8 percent to woman business enterprises ("WBEs") and less than 1 percent to disabled business enterprises ("DSBEs"). Further, 5 percent of sealed bids were won by M/W/DSBEs as prime contractors, demonstrating that M/W/DSBEs are not participating meaningfully in all tiers of City contracting as originally contemplated by this Order. Reauthorization of Executive Order 02-05 will allow the City to continue to implement and enforce contracting strategies and monitor progress towards the realization of M/W/DSBE's equal access to City contracting opportunities.

B. Purpose and Statement of Policy and Mission

Philadelphia is in the midst of an economic renaissance. The City, taking the lead, and sometimes through private and public partnerships, is pursuing initiatives that attract and retain businesses in Philadelphia. The City believes that all businesses, including those owned and controlled by minorities, women and disabled persons, must be given the opportunity to fully participate in the economy and the City acknowledges that the participation of these businesses is critical to the economic growth that the City envisions for its future. Unfortunately, as the D.J. Miller Study documents and recent contracting evidence demonstrates, Philadelphia is

still suffering from the historical effects of discrimination and segregation in education and business. To address the impact of historical and present-day inequities in City contracting, the City is guided by the United States Supreme Court's pronouncements in City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) and its most recent decision in Grutter v. Bollinger, 539 U.S. 306 (2003). The City acknowledges that the consideration of race as a remedy for past discrimination is subject to the constitutional test of "strict scrutiny." This test is not "strict in theory, but fatal in fact" as Justice Sandra Day O'Connor wrote in Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995) in which she noted that "the unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it." The law continues to allow for the implementation of remedies narrowly tailored to redress discrimination. Consistent with the law, the City is committed to a policy of diversity that does not seek to disadvantage or favor one race or ethnicity or gender over another. The City broadly defines "diversity" as encompassing not only race, ethnicity, gender and disability but also elements of socio-economic status, educational attainment and cultural insight and beliefs. The City believes that the benefits of achieving diversity in City contracting go far beyond statistical measurements of business participation of minority, women and disabled owned businesses and are best realized through the City's procurement of high quality and cost-effective goods and services under a broad array of contracts.

In furtherance of this policy and mission, the City of Philadelphia is committed to ensuring that all businesses desiring to do business with the City have an equal opportunity to compete. This Executive Order is designed to take the additional steps warranted and necessary to overcome the utilization disparities found in the City's contracting efforts with minority, women and disabled owned businesses. The City intends to create an environment of inclusion in Philadelphia and to meaningfully increase opportunities for the participation by minority, women and disabled owned businesses in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. The City will continue to enforce the prohibition against discrimination in City Contracts by taking any additional steps necessary to prevent majority owned business enterprises that participate in the City's contracting process from employing any business practices which would have an exclusionary impact on or discriminate against any other business because of its owners' race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age or handicap The City will monitor the activities and performance of majority owned business enterprises to ensure compliance with the goals and objectives of the City and where a violation of this Executive Order is found, the City will take swift and appropriate action in accordance with Section 7.

SECTION 2. Definitions

A. **Annual Disparity Study**. An up-to-date study analyzing the participation of MBEs, WBEs and DSBEs in City Contracts compared to the percentage of qualified MBEs, WBEs and DSBEs available to participate in such contracts. The Annual Disparity Study is distinct from a Disparity Study which is a comprehensive study performed to determine whether discrimination exists in contracting through the use of public and private sector contracting data, statistical models, legal analysis, historical and anecdotal information. The Annual Disparity

Study shall analyze contracting data derived from the Participation Report and may forecast on a fiscal year basis, through the development of annual participation goals, the participation of MBEs, WBEs and DSBES in City Contracts.

B. Benchmark. A Department's annual goal of projected purchasing/contracting with Minority ("MBE"), Woman ("WBE") or Disabled ("DSBE") owned business enterprises (collectively "M/W/DSBEs"), as approved by the MBEC, and expressed as a percentage of the overall contracting/purchasing by that Department in a given year.

C. Bid. A quotation, proposal or offer by a Bidder to provide labor, materials, equipment, supplies or services to the City for a price.

D. Bidder. Any person or business that submits a Bid.

E. Certification. The process by which the MBEC, or its designee, certifies businesses as eligible to participate on City contracts as M/W/DSBEs.

F. City Contract. A contract funded in whole or in part by the City or administered by the City, whether competitively bid or negotiated, within the following categories:

- Service, Supply and Equipment
- Public Works Construction
- Personal and Professional Services
- Concessions
- Miscellaneous and Small Order Purchases

G. City-Related Special Project. A project, including without limitation any project of a Quasi-Public Agency, that requires approval, personnel, financial assistance or services from the City and/or the approval of City Council.

H. Commercially Acceptable Function. An M/W/DSBE performs a Commercially Acceptable Function when it (1) performs a distinct element of a City Contract (as required by the work to be performed in accordance with the bid specifications in a City Contract or on a City Related Special Project) which is worthy of the dollar amount of the M/W/DSBE's contract; and (2) the M/W/DSBE carries out its responsibilities by actually performing, managing, and supervising the work involved.

I. Compliance Plan. A written plan produced by a Department and approved by the MBEC that details how a Department will achieve the goals and objectives of this Executive Order, including its Benchmark in a given year.

J. Control. The power to make day-to-day operational decisions and policy decisions on matters of management, operations and finances.

K. Department. Any City of Philadelphia department, agency, board or commission, including the offices of the Mayor and each Cabinet member.

L. **Disabled Business Enterprise or DSBE.** A for-profit business certified by the MBEC that is:

- A sole proprietorship owned and controlled by a disabled person; or
- A partnership controlled by one or more disabled persons in which at least 51 percent of the beneficial ownership interests are held by one or more disabled persons; or
- A corporation or other entity controlled by one or more disabled persons in which at least 51 percent of the beneficial ownership interests in such corporation or entity are owned by one or more disabled persons.

M. **Disabled Person.** A person who has a physical or mental impairment that substantially limits one or more of his or her major life activities, such as caring for oneself, performing manual tasks, e.g., walking, seeing, hearing, speaking, breathing, learning and performing physical work.

N. **Disadvantaged Business Enterprise or DBE.** A for-profit small business, which is owned and controlled by socially and economically disadvantaged individuals as defined in Title 49 of the Code of Federal Regulations Part 26.

O. **Discrimination.** Any action or pattern of disparate treatment because of race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age or handicap in the solicitation and/or selection of City Contract participants, in the award of a City Contract or in the performance or administration of a City Contract.

P. **Disparity Study.** A comprehensive study that examines discrimination in the public and private sectors against available businesses owned by minority persons, disabled persons and women. A Disparity Study includes, but is not limited to, an analysis of contracting data for the purpose of determining whether statistically significant disparities or underutilization exists in the award of contracts and subcontracts to minority, woman and disabled owned businesses as compared to other businesses and whether the disparities are related to discrimination. A Disparity Study also includes, in addition to statistical findings, an evaluation of available legal remedies, assessment of procurement policies and practices and historical and anecdotal information collected from business owners and other individuals.

Q. **Eligible Joint Venture.** A joint venture in which one or more of the partners is a certified M/W/DSBE that is responsible for a Commercially Acceptable Function in the performance of a City Contract and that shares in the management, risks and profits of the joint venture commensurate with that partner's ownership and capital contribution to the joint venture. For an Eligible Joint Venture to be certified as an M/W/DSBE, more than 50 percent of the beneficial ownership interests must be owned by one or more M/W/DSBEs which must also control the joint venture.

R. Equitable Participation. A level of participation on a City Contract where M/W/DSBEs are not underutilized based upon the availability of M/W/DSBEs within the Greater Philadelphia region to participate on such City Contracts.

S. Exclusion. Practices or policies, intentional or otherwise, which have the effect of barring or underutilizing ready, willing and able M/W/DSBEs on City Contracts.

T. Good Faith Effort. A Bidder's efforts, as evaluated by the MBEC, the scope, intensity and appropriateness of which are designed and performed to achieve meaningful participation of M/W/DSBEs in a specific City Contract.

U. Goal Setting. The employment of various methodologies by the MBEC and Departments, including the establishment of contract-by-contract participation ranges, which shall aspire to increase the participation of M/W/DSBEs as prime contractors, joint venture partners and subcontractors on City Contracts. These methodologies may also include the implementation of race neutral and narrowly tailored race-conscious methodologies based upon an analysis of factors such as historical contracting data, the Department Benchmark, the size and scope of the City Contract and the availability of certified M/W/DSBEs to perform the work of the City Contract.

V. Inclusion. The result of Goal Setting that yields Equitable Participation by M/W/DSBEs on City Contracts and City Related Special Projects.

W. Joint Venture. An association of two or more for-profit businesses carrying out a single purpose by creating a separate and distinct for-profit business venture in which they combine their resources, capital, efforts, skills and knowledge.

X. Majority Owned Business. Any for-profit business that is not beneficially owned and controlled by a minority, woman or disabled person.

Y. Minority Business Enterprise Council (MBEC). A central services unit in the Office of the Director of Finance with the authority and responsibility to oversee the implementation and enforcement of this Executive Order.

Z. Minority Business Enterprise or MBE. A for-profit business certified by the MBEC, that is:

- A sole proprietorship owned and controlled by a Minority Person; or
- A partnership controlled by one or more Minority Persons in which at least 51 percent of the beneficial ownership interests are owned by one or more Minority Persons; or
- A corporation or other entity controlled by one or more Minority Persons in which at least 51 percent of the beneficial ownership interests in such corporation or entity are owned by one or more Minority Persons.

AA. Minority Person. A person who is:

- African American or Black, having origins in any of the Black racial groups of Africa;
- Hispanic American, including persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- Asian American, including persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; or
- Native American, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

BB. Participation Report. An annual report prepared and issued by the MBEC to the Mayor and City Council that reports the dollar amount and percentage value of M/W/DSBE participation on City Contracts awarded to for-profit businesses during the preceding Fiscal Year (July 1st through June 30th).

CC. Quasi-Public Agency. Any authority or quasi-public corporation which either:

- receives an appropriation from the City; or
- has entered into a continuing contractual or cooperative relationship with the City; or
- operates under legal authority granted to it by City ordinance, including, but not limited to, PHA, PIDC, RDA, Penn's Landing Corporation, the Hospitals and Higher Education Authority and PFMC (for PGW).

DD. Responsible Bid. A Bid, which in addition to satisfying all of the requirements under any applicable pre-bid or post-bid qualification procedure, including, but not limited to Section 17-101 of the Philadelphia Code, rebuttably demonstrates that the Bidder has not engaged in discriminatory or exclusionary conduct in the solicitation of contract participants as part of a Bid and that the Bidder will not engage in discrimination or exclusionary conduct in the performance of a City Contract if awarded.

EE. Responsive Bid. A Responsible Bid that, in addition to all other requirements of the bid specifications, request for proposals, or similar document, contains documentary evidence of the M/W/DSBEs that have been solicited and that will be used by the Bidder on a City Contract, if awarded, where the Bid satisfies the M/W/DSBE participation ranges for that City Contract, as applicable, and demonstrates Good Faith Efforts. When a Bidder is unable to achieve the participation ranges set for a specific City Contract, a Responsive Bid consists of the submission of a Responsible Bid that contains the required documentary evidence along with a written request for the reduction of all or part of the M/W/DSBE participation requirements ("Request For Reduction/Waiver"), which is granted based on a determination by the MBEC that

the bidder exercised Good Faith Efforts to comply with the M/W/DSBE participation requirements.

FF. Woman Business Enterprise or WBE. A for-profit business certified by the MBEC that is:

- A sole proprietorship owned and controlled by a woman; or
- A partnership controlled by one or more women in which at least 51 percent of the beneficial ownership interests are held by one or more women; or
- A corporation or other entity controlled by one or more women in which at least 51 percent of the beneficial interests in such corporation or entity are owned by one or more women.

SECTION 3. The Minority Business Enterprise Council and Advisory Board

A. Reauthorization of MBEC

The MBEC is hereby reauthorized. The MBEC shall be a central services unit in the Office of the Director of Finance, and the Executive Director of the MBEC shall report to the Director of Finance. The MBEC shall establish a program structured to fulfill the purposes set forth in Section 1, which program must be approved by the Director of Finance, and the MBEC shall be responsible to carry out the duties and responsibilities given to it under this Executive Order.

B. Minority Business Enterprise Council Advisory Board

1. The Mayor appoints a Minority Business Enterprise Council Advisory Board ("MBEC Advisory Board") to provide input and recommendations in support of the goals and objectives of this Executive Order. The Mayor appoints the Chair of the MBEC Advisory Board and all members, which must number at least fifteen (15). At least one member of the MBEC Advisory Board shall be appointed from each of the following constituencies:

    - Certified M/W/DSBEs
    - Building Trades
    - Majority Owned Businesses
    - Nonprofit Organizations
    - Construction Contractors
    - Architects and Engineers

2. The MBEC Advisory Board shall meet monthly and shall among other issues which may properly be brought before the Council consider:

    a. Recommending strategies to increase the employment of minorities, women and the disabled in the building trades.

b. Recommending strategies to increase the employment of minorities, women and the disabled on publicly funded construction projects.

c. Recommending strategies to increase the award of prime City Contracts to M/W/DSBEs.

C. Certification

1. The MBEC shall establish standards and procedures for certifying M/W/DSBEs, and the MBEC, or its designee, shall have the authority to certify M/W/DSBEs in accordance with those standards and procedures. The certification procedure adopted pursuant to this Executive Order must inspire public confidence that the certified businesses are in fact bona fide M/W/DSBEs. Any designee of the MBEC authorized to carry out the certification procedure authorized herein must be approved by the Director of Finance. The MBEC, with the approval of the Director of Finance may allow reciprocity for businesses certified by other reputable certifying agencies, provided that it gives routine public notice of which agencies and/or governmental certifications will be recognized.

2. Certification Appeal Process. Any business denied certification under Section 3 (C.) (1.) or removed from eligibility as a M/W/DSBE by the MBEC, may file a written appeal with the MBEC in accordance with MBEC procedures. The decision of the MBEC may be appealed, in writing, to the Director of Finance whose decision shall be final.

3. The MBEC shall maintain a directory of certified M/W/DSBEs. The MBEC directory shall list all M/W/DSBEs certified to do business with the City as M/W/DSBEs along with the commodity code classifications within which they are qualified to provide equipment, supplies, materials or services. The MBEC directory shall be updated on at least a quarterly basis.

4. The MBEC, as a member of the Pennsylvania Unified Certification Program, shall certify DBEs pursuant to 49 CFR Parts 23 and 26. Only firms certified as DBEs by the Pennsylvania Unified Certification Program may be counted towards DBE participation ranges on any federally assisted contracts requiring DBE participation. All DBEs will be listed in the Pennsylvania Unified Certification Program Directory. All denials of DBE certification or removal of DBE eligibility may be appealed, solely, through the Pennsylvania Unified Certification Program.

D. Compliance Plans and Race and Gender Neutral Strategies

1. The MBEC shall have the authority to direct the submission of Compliance Plan(s) by any Department and shall approve the Compliance Plans and Benchmarks proposed pursuant to Section 5(A)(1). No Compliance Plan or Benchmark shall become effective without the approval of the MBEC.

2. The MBEC shall have the authority to approve the M/W/DSBE participation ranges set for each City Contract pursuant to Section 5(A)(2) and no M/W/DSBE participation range proposed for a City Contract shall become effective without the approval of the MBEC. All M/W/DSBE participation ranges set pursuant to Section 5(A)(2) and approved pursuant to Section 3(D)(2) shall be targeted to offer the maximum opportunity for M/W/DSBE participation on City Contracts.

3. The MBEC and Departments, with the approval of the Director of Finance, shall consider any and all appropriate race and gender neutral strategies that allow the City to identify additional opportunities for M/W/DSBE participation that may have heretofore been overlooked or to relax contract requirements which unduly restrict participation by M/W/DSBEs. Those strategies may include, subject to legal requirements, the relaxation of bonding, insurance, extensive experience and capitalization requirements. They may also include adjusting a proposed solicitation, where feasible, into smaller component parts, conducting aggressive outreach efforts to facilitate matchmaking between M/W/DSBEs and Majority Owned Businesses, providing access to the Procurement Department and purchasing officers throughout the City in a manner that does not discriminate against Majority Owned Businesses, and ensuring that M/W/DSBEs are receiving timely notification of bidding opportunities.

E. Award of City Contracts

1. The MBEC shall be invited by every Department to all pre-bid meetings.

2. The MBEC shall participate on all City Contract selection committees evaluating bids.

3. The MBEC shall review all Bids to determine whether they are Responsive under this Order before the award of a City Contract.

4. The MBEC shall determine whether a Department is awarding City Contracts consistent with and in pursuit of the Benchmark established in its Compliance Plan.

F. Investigations

The MBEC may perform investigations to ensure that Bidders are complying with the goals and objectives of this Executive Order. Such investigations may include site visits to a Bidder's office, other place of business and/or job site to ascertain whether a Bidder has discriminated against and/or excluded M/W/DSBEs in the submission of a Bid during the process to award a City Contract or during the performance of a City Contract.

G. Data Collection and Reports

1. The MBEC shall collect data indicating the dollar amount and percentage participation of M/W/DSBEs on City Contracts awarded to for-profit businesses for each Department on an annual basis; in the event the City Contract was awarded in a previous Fiscal Year, MBEC shall only report dollar amounts achieved in the Fiscal Year subject to the Participation Report. The MBEC shall assist Departments in maintaining Department records showing DBE participation on federally assisted City Contracts.

2. The MBEC shall provide a Participation Report to the Mayor and City Council on or before November 1st of each year, setting forth the dollar amount and percentage participation by M/W/DSBEs on City Contracts as described above. The Participation Report to the Mayor and City Council shall set forth, as a measure of accountability, the performance of each Department as measured against its Benchmark during the immediately preceding period. The Participation Report shall also include the number of prime contracts awarded to M/W/DSBEs by the City. In addition, each Department shall report to the MBEC, for inclusion in the Participation Report, any federally assisted public projects in Philadelphia that had a DBE goal and the level of DBE participation achieved on each project and the level of M/W/DSBE participation achieved on any City Related Special Projects facilitated by the Department.

3. The MBEC, on behalf of the Director of Finance, shall provide an Annual Disparity Study comparing the Participation Report data to the percentage of qualified MBEs, WBEs and DSBEs available to participate in City Contracts. The Annual Disparity Study may, through the development of annual participation goals, forecast the participation of MBEs, WBEs and DSBES in City Contracts on a fiscal year basis.

4. The City has held discussions with the leadership of the Building Trades Unions to discuss ways to enhance and achieve full and fair membership for minorities and women in the unions and their apprenticeship programs. The unions have begun to discuss among themselves how to increase the participation of minorities and women as members. To emphasize the importance of this issue, the MBEC is hereby authorized to recommend and develop strategies for the City's monitoring and evaluation of the number of

minority and female members in each of the Building Trades Unions, the number of minority persons and women annually admitted into each Building Trades apprenticeship program and the Unions' outreach and retention efforts for minority persons and women. Given the belief of the City that the leadership of the Building Trade unions and the leaders of its member unions support the need to improve diversity within the Building Trades, we look forward to their cooperation and collaboration in this effort to gather and maintain accurate information.

5. The City also desires to see that minority persons and women are given fair access to employment on public works projects funded pursuant to a City Contract. The MBEC shall devise methodologies for the City's collection of workforce composition statistics, which will identify the number of minorities and women employed to work on those projects. The MBEC shall work with the Director of Finance and City Solicitor to develop strategies and contract language that will improve the City's ability to achieve this objective. The MBEC also shall work with the City's Labor Standards Unit to devise methods for tracking the number of minority persons and women working on City Public Works Contracts.

6. It shall be City policy for the MBEC to contract for the performance of a Disparity Study at least every four years, and to make recommendations concerning appropriate strategies to increase M/W/DSBE participation where disparities or underutilization related to discrimination exists in any tier of City contracting.

H. Nonprofit Organizations

The City annually spends a substantial percentage of its contract dollars with nonprofit organizations and expects these organizations to share the City's commitment to diversity. Although City Contracts with nonprofit organizations are not subject to the City's M/W/DSBE participation ranges, all City Contracts with nonprofit organizations shall include provisions requiring that the nonprofit : (i) provide to the City annually, a written diversity program identifying the race, gender, disability status, and ethnic composition of its board of directors, its employment profile, a list of all vendors that the nonprofit does business with in its M/W/DSBE procurement program and a statement of the geographic area(s) where its services are most concentrated and (ii) demonstrate, to the City's satisfaction, that the nonprofit's organization makes appropriate efforts to maintain a diverse workforce and board of directors and operates a fair and effective M/W/DSBE procurement program. The MBEC working with those Departments who contract with nonprofit organizations and with the approval of the Director of Finance, may adopt and publish a set of policies and procedures for the evaluation of nonprofit organizations that contract with the City.

I. Training and Outreach

1. The MBEC shall provide training programs for those City employees involved in the implementation of this Executive Order. Training programs shall be designed to provide the knowledge and develop the skills required by City employees to increase M/W/DSBE percentage participation in City Contracts and to improve the diversity of nonprofit organizations. Training programs shall be scheduled regularly and all City employees involved in the procurement and contracting processes of the City, including those who award nonprofit contracts, must attend at least one such program annually.

2. The City desires to increase the number and value of prime contracts awarded annually to M/W/DSBEs. The current number of prime contracts awarded by the City to M/W/DSBEs is unacceptable given the number of certified M/W/DSBEs in the Greater Philadelphia region. The MBEC shall conduct seminars for M/W/DSBEs to improve their understanding of the City's procurement processes and their opportunities to compete successfully for prime contracts with the City. The MBEC shall work with the Procurement Department and other contracting officers within the City to ensure that there are no artificial business reasons or unreasonable resistance to awarding prime contracts to M/W/DSBEs.

SECTION 4. The Greater Philadelphia Economic Opportunity Task Force

A. Diversity within the Greater Philadelphia Region

If we are to achieve an equitable distribution of contract opportunities and economic equity for M/W/DSBEs within the Greater Philadelphia region, improve their chances to grow as thriving businesses, and create an environment in which our corporate board rooms and executive suites better reflect the diversity of the Greater Philadelphia region, then we must achieve greater diversity in the private sector throughout the Greater Philadelphia region. The City desires to work with area Chambers of Commerce and business, civic, political, labor and religious leaders throughout the region both to create a greater commitment to diversity and to implement programs that produce results. In order for businesses within the region to attract the best and the brightest among young professionals from colleges and universities within our region as well as from around the country and the world, young professionals must believe that opportunities here equal or exceed other centers of commerce. Greater diversity on corporate boards and within the executive suites of our leading employers and corporate citizens along with increased contract opportunities for M/W/DSBEs within the private sector will strengthen our overall regional economy and improve our appeal to young professionals.

B. Task Force

1. To provide advice and counsel to the City on the issue of expanded

diversity within the private sector, the Greater Philadelphia Economic Opportunity Task Force ("Task Force") is hereby established. The Task Force shall be chaired by the Director of Finance and shall consist of at twenty-five (25) members who shall be appointed by the Mayor. The Task Force shall consist of at least one representative from each of the following constituencies:

- AFL-CIO
- Business community
- City Council
- Colleges and Universities
- County Commissioners
- Financial or Accounting Institutions
- Health Care Community
- Hospitality Industry
- Law Firms
- Management Consulting Firms
- Nonprofit Organizations
- State Economic Development Agencies

2. The Task Force shall advise the Mayor and shall make recommendations concerning:

- Increasing M/W/DSBE procurement opportunities with private sector businesses throughout the Greater Philadelphia Region.
- Expanding opportunities for minorities and women to be appointed to seats on the boards of directors of private sector businesses throughout the Greater Philadelphia region.
- Expanding opportunities for minorities and women to become senior level executives with private sector businesses throughout the Greater Philadelphia region.

SECTION 5. Departments and Quasi-Public Agencies

A. Departments

1. Departments on or before May 1st of each fiscal year shall deliver a written Compliance Plan to the MBEC that includes their Benchmarks for the next fiscal year and their overall strategy for providing maximum opportunities for the participation of M/W/DSBEs in a Department's purchasing/contracting. In creating its Compliance Plan and in determining its Benchmarks and proposed participation ranges pursuant to subsection (2) below, each Department shall take into consideration the types of contracts that it intends to award, the number of M/W/DSBEs within the Greater Philadelphia region available to participate in those

contracts, historic evidence of discrimination against minorities, women or disabled persons in the industries pertinent to the Department's contracts, including the extent of the City's passive participation in such discrimination, and any other appropriate factors. At the approval of the MBEC, certain classes of purchasing/contracting by a Department may be exempted from inclusion in the Compliance Plan.

2. Each Department shall propose M/W/DSBE participation ranges for City Contract to be awarded by the Department, and shall submit such proposed ranges for approval by the MBEC. Departments shall seek to provide maximum opportunities for M/W/DSBE participation on each City Contract and in so doing may rely upon or incorporate any appropriate race or gender-neutral strategy including those described in Section 3 D. hereof. In addition, for each City Contract, the Department shall collect information from all Bidders concerning the Bidders' commitment to the mission of diversity as enunciated under this Order. The MBEC may adopt and publish policies for the collection and review of this information which may include the submission by Bidder of a detailed statement of the number of minorities and women employed by Bidder and a list of M/W/DSBEs with which Bidder has contracted on private sector projects.

3. Departments shall invite MBEC staff to all pre-bid and pre-proposal meetings and all selection committee meetings, which the MBEC may attend at its discretion.

4. Departments shall work with the MBEC to conduct seminars, training programs and outreach activities for M/W/DSBEs both to improve M/W/DSBE opportunities to participate on City Contracts and to encourage qualified minority, women and disabled owned businesses to become certified with the City.

5. Each Department shall meet quarterly with the MBEC to monitor its progress toward achieving the Department's annual Benchmark.

6. Each Department shall cooperate with the MBEC with respect to requests for information from the Department relative to enforcing compliance with this Executive Order, including the furnishing of records and documents.

B. Quasi-Public Agencies

All Mayoral appointees to the board of any Quasi-Public Agency shall take all available steps to direct those agencies to establish an M/W/DSBE Economic Opportunity Plan, which incorporates the goals and objectives, contained in this Executive Order. The Director of Finance shall communicate this directive to all such appointees.

1. The MBEC may enter into cooperative agreements with Quasi-Public Agencies to help them establish M/W/DSBE programs and to provide support to Quasi-Public Agencies during the implementation of their programs.

2. Any Quasi-Public Agency that awards a contract for a City Related Special Project shall cooperate with the MBEC to establish the maximum participation ranges and to ensure that the M/W/DSBE participation ranges established for the project are met to the maximum extent feasible.

3. All of the terms and conditions of this Order that apply to City Contracts, as appropriate, shall apply equally to all contracts for City Related Special Projects.

SECTION 6. Bidders

A. Bidders shall be required to submit Bids which are responsible and responsive to the written bidding instructions issued by the City, which instructions may include requirements for the participation of M/W/DSBEs or DBEs. Bidding instructions related to this Order will require Bidders to document their solicitation of and commitment with M/W/DSBEs, and the failure to do so may result in the rejection of a submittal based on the MBEC's determination that the submittal is nonresponsive. As part of their submission, Bidders shall identify only those M/W/DSBEs that perform a Commercially Acceptable Function. If a Bid contains participation by M/W/DSBEs at least equal to the M/W/DSBE participation ranges established by the MBEC and the Department, it will be rebuttably presumed that the Bid is responsive with respect to the requirements of this Order, and that the Bidder has not improperly discriminated against or excluded M/W/DSBEs. When a Bid does not satisfy the M/W/DSBE participation ranges set by the MBEC and the Department, and a Bidder submits a Request For Reduction/Waiver of those participation ranges, the MBEC will evaluate whether the Bidder has made Good Faith Efforts to include M/W/DSBEs in its Bid.

B. If a Bidder does not satisfy the M/W/DSBE participation ranges on a Bid and fails to submit a Request For Reduction/Waiver for all or part of the M/W/DSBE participation ranges, or submits a Request For Reduction/Waiver but the MBEC determines that Bidder has not made a Good Faith Effort or fails to cooperate with the MBEC in its review of a Bid, the MBEC will determine that the Bid is nonresponsive and the Bid shall be rejected by the contracting Department.

C. Bidder Appeal Process. A Bidder whose Bid is deemed nonresponsive by the MBEC may file a written appeal with the MBEC in accordance with MBEC procedures. The decision of the MBEC may be appealed, in writing, to the Director of Finance or his/her designee whose decision shall be final.

D. If the MBEC determines that the Bidder has discriminated against a M/W/DSBE or intentionally excluded them from a Bid on the basis of minority status, gender or disability, the MBEC may recommend to the Director of Finance the imposition of sanctions on the Bidder including the debarment of the Bidder from submitting on and/or participating in future City Contracts for a period of up to three (3) years.

SECTION 7. Monitoring and Enforcement

A. The MBEC shall devise and implement strategies to monitor contracting activities and shall make findings and recommendations to the Director of Finance as are necessary and appropriate to enforce this Executive Order. These actions may include:

1. Monitoring contract performance by conducting on-site inspections and post-contract award compliance reviews to ensure that discrimination and/or exclusion does not occur in the course of the performance of any City Contract. The MBEC may also meet with M/W/DSBEs working on City Contracts;

2. Monitoring prime contractors' payments to M/W/DSBEs through electronic payment tracking or other means;

3. Issuing guidelines and promulgating regulations, through the Office of the Director of Finance, in interpretation of this Executive Order;

4. Recommending to the City Solicitor contractual provisions to be included in all City Contracts in furtherance of the goals and objectives of this Order;

5. Reporting findings of discrimination and/or exclusion to the Mayor, the Director of Finance, the City Solicitor, the Inspector General and other appropriate legal authorities;

6. Recommending withholding of payments or termination of a contract if the MBEC determines that a Bidder has failed to comply with contractual provisions requiring M/W/DSBE participation. The MBEC may recommend that the City exercise its legal remedies, including, if appropriate, debarment of the Bidder in accordance with the City's Policy and Procedure for the Debarment and Suspension of Vendors and Bidders;

7. Recommending to the Director of Finance suspension of a Department's contracting authority when a Department consistently fails to achieve its Benchmark; and

8. Monitoring the bidding frequency and success of M/W/DBES as prime contractors.

B. The Director of Finance, at his/her discretion, shall act upon the findings and recommendations of the MBEC. In the event the Director of Finance determines that any person has failed to comply with contractual requirements pursuant to this Executive Order, the Finance Director may, in addition to any sanctions provided under the City Contract or recommended by the MBEC, terminate the City Contract and/or pursue any remedies that are available at law or in equity.

C. Any disputes that arise under this Executive Order between the MBEC and any Department or Quasi-Public Agency, shall be referred to the Director of Finance for resolution. The Director of Finance after consultation with the City Solicitor shall resolve such disputes.

SECTION 8. Severability and Authorization

The provisions of this Executive Order are severable, and if any provision or application is held illegal, such illegality shall not affect the remaining provisions. This Order remains in effect and shall continue for a four year period from September 4, 2006 to September 4, 2010 unless reauthorized for an additional period of time if further remedial action consistent with the objectives of this Order is required beyond this date.

Date: September 4, 2006

Honorable John F. Street, Mayor
City of Philadelphia