

EXECUTIVE ORDER NO. 6 - 90

WHEREAS, it is the policy of the City of Philadelphia to provide equal opportunity to participate in City contracts for all businesses and to assure that City funds are not used to promote, reinforce or perpetuate discriminatory practices; and

WHEREAS, there are at present more than 1900 qualified minority-owned, female-owned and disabled-owned businesses located in this region willing and available to participate in all types of City contracts on an equitable basis with other businesses; and

WHEREAS, Article 1 of the Pennsylvania Constitution, Sections 26 and 28, prohibits the denial or abridgement of any person's enjoyment or exercise of any civil rights; and

WHEREAS, the Pennsylvania Legislature has expressed its commitment to preventing discrimination by enacting the Pennsylvania Human Relations Act, 43 P.S. §§951 et seq.; and

WHEREAS, the Preamble to The Philadelphia Home Rule Charter provides that the Charter was adopted to establish "a form of improved municipal self-government in which all qualified citizens may participate equally without any distinction based on race, color, religion or national origin"; and

WHEREAS, Section 10-1100 of The Philadelphia Home Rule Charter prohibits officers, employees and agencies of the City from using their powers or performing their duties in such a manner as will discriminate against any person because of race, color, religion or national origin; and

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

WHEREAS, the City must, in furtherance of this policy, take necessary measures to ensure that all businesses are free to participate in City contracts without the impediments of discrimination; and

WHEREAS, establishment of a system for reviewing the contracting activities of contractors who do business with the City will assist in the identification of contractors who discriminate in contravention of State and local non-discrimination mandates;

NOW, THEREFORE, I, W. WILSON GOODE, 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. Purpose.

The City of Philadelphia is committed to the policy of fostering an environment in which all businesses are free to flourish without the impediments of discrimination and participate in all City contracts on an equitable basis. Bidders

on City contracts shall not discriminate against any business because of race, color, religion, national origin, sex or disability. In furtherance of this policy, the Minority Business Enterprise Council (MBEC) shall review all bids to ascertain whether discrimination has occurred in the solicitation or selection of contract participants in accordance with the provisions of this ORDER.

SECTION 2. Definitions.

(A) Bid. A quotation, proposal, solicitation or offer by a bidder or proposer to perform or provide labor, materials, equipment, supplies or services to the City for a price.

(B) Bidder. Any business that submits a quotation, bid or proposal to provide labor, materials, equipment, supplies or services to the City.

(C) City Contract. All City contracts, whether competitively bid or negotiated, within the following classes:

- (1) Vending, to include materials, equipment, services and supplies;
- (2) Construction;
- (3) Personal and professional services; and
- (4) Concessions.

(D) Control. The power to direct or cause the direction of the management and policies of a business and to make day-to-day as well as major decisions on matters of management, policy and operations. Control shall be active, real, substantial and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. Control by a minority, female

or disabled person shall not be deemed to exist if a non-minority, non-female, or non-disabled person is disproportionately responsible for the operation of the business or if the business is subject to any formal or informal restrictions which limit the customary discretion of the minority, female or disabled owners. Control shall be exemplified by possession of the requisite capital, knowledge and expertise to operate the particular business.

(E) Disabled business enterprise or DSBE. A business certified by the MBEC which is:

- (1)** A sole proprietorship, owned and controlled by a disabled person;
- (2)** A partnership or joint venture controlled by disabled persons in which at least 51% of the beneficial ownership interest is held by disabled persons;
- (3)** A corporation or other entity controlled by disabled persons in which at least 51% of the interest in such corporation or entity is beneficially owned by disabled persons.

(F) Disabled Person. A person who has a physical or mental impairment which substantially limits one or more of his or her major life activities. Major life activities shall mean functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(G) Discrimination. Any action or pattern of disparate treatment in the solicitation for bids or in the award of a subcontract because of race, color, religion, sex, national origin, ancestry or disability.

(H) Women's Business Enterprise or WBE. A business certified by the MBEC which is:

(1) A sole proprietorship, owned and controlled by a woman;

(2) A partnership or joint venture controlled by women in which at least 51% of the beneficial ownership interest is held by women;

(3) A corporation or other entity controlled by women in which at least 51% of the interest in such corporation or entity is beneficially owned by women.

(I) Minority Business Enterprise or MBE. A business certified by the MBEC which is:

(1) A sole proprietorship, owned and controlled by a minority person;

(2) A partnership or joint venture controlled by minority persons in which at least 51% of the beneficial ownership interest is held by minority persons;

(3) A corporation or other entity controlled by minority persons in which at least 51% of the interest in such corporation or entity is beneficially owned by minority persons.

(J) Minority Person. A person who is an Asian American, Black American, Hispanic American or Native American.

(K) Responsible. A bid which, in addition to review under any applicable pre-bid or post-bid qualification procedure (including, but not limited to §17-101 of The Philadelphia Code), demonstrates that the bidder has not engaged in discriminatory conduct. Upon receipt of bids, the submittals of each bidder will be subject to review by the MBEC to determine whether the bidder has discriminated in the solicitation and/or award of subcontracts. If a bidder's bid reflects participation commensurate with the projected ranges of MBE/WBE/DSBE participation, the bidder will be rebuttably presumed not to have discriminated in its selections. Where the projected ranges are not met, the MBEC will initiate an investigation to determine whether discrimination has occurred. If the bidder fails to cooperate with the MBEC in its review or the MBEC finds that discrimination has occurred, the MBEC will recommend that the bidder be deemed not responsible and its bid rejected.

(L) Responsiveness. The bidder's submission, (in addition to the submission of any other required documentation), of documentary evidence of MBEs, WBEs and DSBEs who have been contacted and who are to be used on the contract. Documentation must be submitted at the time of bid opening and failure to submit evidence of such solicitations and commitments will result in rejection of the bid as being non-responsive.

(M) Projected Range. For each contract, the range of MBE/WBE/DSBE subcontract participation that should be attained from the available market absent discrimination in solicitation and selection. The projected range shall be established by the MBEC and will be based upon an analysis of factors such as the size and scope of the contract and the availability of certified MBE/WBE/DSBEs to perform the work of the contract.

SECTION 3. Administration.

The Minority Business Enterprise Council or MBEC, which is a part of the Office of The Director of Finance, shall perform the functions specified in this ORDER and shall make such findings, recommendations and proposals to the Director of Finance as are necessary and appropriate to enforce this ORDER. Any findings of discrimination that the MBEC shall make in the course of implementing this ORDER will be reported to the Commission on Human Relations.

SECTION 4. Function Of The MBEC.

The MBEC is authorized and shall perform the following functions:

- (1) Certify MBEs, WBEs and DSBEs and maintain a directory of such firms for the purpose of identifying the numbers and business classifications of these firms;
- (2) Establish projected ranges of MBE/WBE/DSBE participation for each City contract based upon analysis of the bid specifications and availability of MBE/WBE/DSBEs to perform various elements of the contract;
- (3) Attend pre-bid meetings to provide information to bidders;
- (4) Review bids for bidders' responsiveness and responsibility and forward findings and recommendations to the Procurement Department or agency letting the contract;
- (5) Perform investigations, including site visits to the bidder's firm to ascertain whether the bidder has discriminated in the solicitation or award of a subcontract;

(6) Report findings of discrimination to the Commission on Human Relations;

(7) Maintain records of MBE/WBE/DSBE participation in City contracts;

and

(8) Monitor contracts to ensure that discrimination does not occur in the course of the performance of any contract.

SECTION 4. Effective Date. This ORDER shall be effective as of **August 1, 1990.**

July 12, 1990
Date:

W. Wilson Goode
W. WILSON GOODE,
Mayor