EXECUTIVE ORDER NO. 1-93

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

WHEREAS, there are at present more than 1200 qualified socially and economically disadvantaged minority-owned, female-owned and disabled-owned businesses, certified by the City's Minority Business Enterprise Council , which are 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, Edward G. Rendell, by the powers vested in me in accordance with Section 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 participate in business opportunities and 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 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 socially and economically disadvantaged 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 socially and economically disadvantaged minority, female or disabled owners.

Control shall be exemplified by possession of the requisite capital, knowledge and expertise, including any appropriate licensure, to operate the particular business.

(E) Disadvantaged Disabled Business Enterprise or DS-DBE. A small, for-profit business certified by the MBEC which is:

(1) A sole proprietorship, owned and controlled by a socially and economically disadvantaged disabled person;

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

(3) A corporation or other entity controlled by socially and economically disadvantaged disabled persons in which at least 51% of the interest in such corporation or entity is beneficially owned by socially and economically disadvantaged 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 and selection of contract participants because of race, color, religion, sex, national origin, ancestry or disability.

(H) Disadvantaged Minority Business Enterprise or M-DBE. A small, for-profit business certified by the MBEC which is:

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

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

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

(I) Disadvantaged Women's Business Enterprise or W-DBE. A small, for-profit business certified by the MBEC which is:

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

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

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

(J) Minority Business Enterprise Council. To help implement, monitor and enforce this Order there is hereby created the Minority Business Enterprise Council ("MBEC"), an advisory board in the Office of the Director of Finance. The MBEC shall consist of between nine (9) and fifteen (15) members, all of whom shall be appointed by the Mayor and shall serve at his discretion. The MBEC shall have sufficient administrative staff and support services to carry out the functions listed in Section 4 of this Order.

(K) Minority Person. A person who is an African-American, Asian-American, Hispanic/Latino American or Native American.

(L) Projected Range. For each contract, the range of M-DBE/W-DBE/DS-DBE participation that should be attained from business opportunities existing in 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 M-DBE/W-DBE/DS-DBEs to perform the work of the contract.

(M) 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 selection of contract participants. If a bidder's bid reflects participation commensurate with the projected ranges of M-DBE/W-DBE/DS-DBE 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. Bids rejected for responsibility (due to a determination of discrimination) may result in the

suspension of the bidder from bidding on and/ or participating in any future City contracts for a period of up to three (3) years.

(N) Responsiveness. The bidder's submission, (in addition to the submission of any other required documentation), of documentary evidence of M-DBEs, W-DBEs and DS-DBEs who have been contacted and who are to be used on the contract. Documentation must be submitted in accordance with the written bidding instructions and any failure to submit evidence of such solicitations and commitments will result in rejection of the bid as being non-responsive.

(O) Small Business. A business which is independently owned and operated and which is not dominant in its field of operation as further defined by the Small Business Size Regulations, adopted by the U.S. Small Business Administration and published in the U.S. Code of Federal Regulations, including the industry size standards set forth in the tables contained therein, which regulations are incorporated herein and made a part by reference.

(P) Socially and Economically Disadvantaged Individuals. Individuals who have been subjected to racial, sexual or ethnic prejudice because of their identity as a member of a group or differential treatment because of their disability without regard to their individual qualities, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business and competitive market area who are not socially and economically disadvantaged.

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.

(1) Certify M-DBEs, W-DBEs and DS-DBEs 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 M-DBE/W-DBE/DS-DBE participation for each City contract based upon analysis of the bid specifications and availability of M-DBE/W-DBE/DS-DBEs to perform various elements of the contract;

(3) Attend pre-bid (including pre-proposal) meetings to provide information to bidders;

(4) Review bids for 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 and/or job site 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 and Office of The Mayor;

(7) Maintain records of M-DBE/W-DBE/DS-DBE participation in City contracts;

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

(9) Provide information on contracting opportunities to certified firms;

(10) Review City departmental requests for proposals and bid specifications to identify requirements which unduly restrict participation by M-DBE/W-DBE/DS-DBEs.

SECTION 4. Effective Date.

This ORDER shall take effect in thirty (30) days and shall apply to bids issued on or after the effective date of this ORDER.

January 15, 1993
Date:

Edward G Rendell
Edward G. Rendell
Mayor

EXECUTIVE ORDER 1-93
ANTIDISCRIMINATION POLICY

AMENDMENT NO. 1

Section 2. Definitions of Executive Order 1-93 is hereby amended to include an additional defintion:

> "(Q). Special Class Minority (SCM), Women (SCW) and Disabled (SCDS) Business Enterprise. Firms that have been certified for ownership and control, on a project-by-project basis. This special class of certified firm has the capability to participate as prime, joint venture partner, and subcontractor and shall be approved to compete on select City contracts and bids which require a significant investment of capital and/or equipment (and materials)."

Edward G. Rendell
Edward G. Rendell
Mayor

May 3, 1993
Date

(TO BE ATTACHED TO EXECUTIVE ORDER 1-93 ISSUED ON JANUARY 15, 1993)

EXECUTIVE ORDER 1-93
Antidiscrimination Policy
Amendment No. 2

SECTION 2. Definitions.

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"(Q) Special Class Minority (SCM), Women (SCW) and Disabled (SCDS) Business Enterprise. Firms that have been certified for ownership and control, on a project-by-project basis. This special class of certified firm has the capability to participate as prime, joint venture partner and subcontractor and shall be approved to compete on select City contracts, in excess of one million dollars ($1,000,000.), [and bids] which require a significant investment of capital and/or equipment (and materials)."

Edward G. Rendell
Mayor

5-17-93
Date