

I. INTRODUCTION

On behalf of MBEC, I thank the Controller's Office for undertaking this audit (the "Audit"). I welcome the opportunity to enter into a discussion which will assist me and my staff to create a better, more efficient and a more "constituent-based" MBEC.

My staff and I have structured our response to the Audit in the following manner:

I. Introduction

II. General Response to the Audit

A. Explaining the conditions and circumstances surrounding MBEC during the Audit's period of review

B. Correcting the Audit's factual inaccuracies and incorrect inferences

III. MBEC's stated plans and goals before it received the Audit

A. The plans and goals I initially brought to MBEC

B. Innovative Strategies' (i.e., our consultant, Mario Trevino) workplan for MBEC

IV. MBEC's accomplishments before it received the Audit

V. How MBEC will incorporate the Audit's recommendations to its stated goals and plans

While the events outlined in the Audit occurred before I began as Director, it would do a disservice to my extremely hard-working and dedicated staff not to acknowledge the fact that departmental conditions before my arrival (e.g., severe understaffing, the federal investigation, inadequate resources, etc.) were clearly not conducive to maintaining a well-run department. That said, I publicly applaud my staff for working through untenable conditions, and for fully coming "on board" regarding my plans and overall goals for MBEC.

When I first came to MBEC, my very public, overall goals for the department were thus:

1. To explore outsourcing the certification process;

2. To enhance MBEC's monitoring, compliance and enforcement functions by hiring an Enforcement Deputy and creating an Enforcement, Compliance and Monitoring Unit within MBEC; and

3. To create a Special Projects unit within MBEC, which would concentrate on marketing our vendors, both internally to City departments and externally to private entities, outreach to our vendors, and various other public relations functions.

I decided that MBEC, instead of being a "certification-based" department, should rather become a "constituent-based" department, i.e., a department that would better serve our vendors by working on methods to better include them in the public and private contracting arena in the City, as opposed to concentrating the majority of our efforts on processing certifications.

During the first few weeks at MBEC, I determined that I also needed to institute systems by creating, memorializing and promulgating policies and procedures through the creation of manuals and memorandum and to restructure the department's staffing alignment in order for the department to run in a more efficient, "constituent-friendly" manner. My determination was confirmed after speaking to and receiving a workplan from our consultant, Mario Trevino, principal of Innovative Strategies.¹ Mr. Trevino's workplan calls for, *inter alia*, changes in our systems that practically mirror the recommendations in the Audit.

As our response will demonstrate, MBEC was well on the road to becoming a more efficient, effective and constituent-based department before we received the Audit. It would have been helpful, in retrospect, if a member of the Audit team had met with me during the audit process; I would have gladly communicated all the information contained within this response to the Audit team. In any event, we certainly welcome the Audit's recommendations, and we certainly will incorporate the relevant and appropriate recommendations in our overall plans and goals.

II GENERAL RESPONSE TO THE AUDIT

A. BUSINESSES ARE BEING INAPPROPRIATELY CERTIFIED AS DISADVANTAGED

MBEC disagrees with this finding. MBEC has long utilized the Federal Register, 49 CFR Parts 23 and 26, as its basis for certification. Only firms meeting this criterion have been reviewed for consideration under Executive Orders 1-03 and 1-93. If a firm's principals' Personal Net Worth (PNW), exceeds the \$750,000 eligibility requirements, a firm is advised to request *Special Class* certification, which is granted on a project-by-project basis. To that end, the applicant may apply for *Special Class* certification. Written procedures have been provided to all staff involved in the certification process. This document has existed since 2000.

As to notarization, the staff had no knowledge that blank spaces on the notarized application had to be filled in. The staff has been instructed to have all spaces completed.

Certification processing, when appropriately staffed (and outsourced), will have personnel to review initial applications and supporting documents and make recommendations to certify or deny to a Certification Coordinator/Supervisor. The Certification Coordinator/Supervisor, will confirm or remand the recommendation. The Coordinator/Supervisor will then sign and forward the application to the Deputy Director of Operations or the Director for final approval and signature.

While certification is a primary responsibility for each new economic development project, there is a need for expedited certifications for vendors who need certification in order to work with developers on those new projects. Consequently, the certification period is extended for current vendors. For example, in FY 01, 02, and 03, new development significantly increased the workload of staff. A few of MBEC's more recent projects are: Naval Ship Yard, Kimmel Center, Gateway/Independence Visitor Centers, Airport Expansion, Sport Facilities and the Neighborhood Transformation Initiative (NTI). This surge of applications has outpaced MBEC's personnel and the level of staff output; thereby causing a backlog.

B. TIME TO BECOME CERTIFIED AS DISADVANTAGED CAN VARY WIDELY

Yes, this does happen. However, requests for additional information and necessary expedition of certain applications, as explained above in § II A, impact processing time and should be considered. Staffing resources play a more significant role in the certification review process than the auditors factored. For example, during the height of the audit period, MBEC had a staff of 13. However,

only six people at any given time were available to handle our certification volume, three of which had other responsibilities.

C. SYSTEM FOR ESTABLISHING PARTICIPATION RANGES NEEDS IMPROVEMENT

MBEC does not agree. The bidding process itself is objective. In many cases, bidders do not subcontract out the same activity; therefore, MBEC incorporates a number of factors in developing its ranges:

1. **Determining the number of certified M/W/DS-DBEs available to participate by capacity level.** For example, a M/W/DS-DBE firm whose capacity to compete is \$25,000 versus another M/W/DS-DBE whose capacity is \$100,000 would factor heavily into the actual range application for each discipline/opportunity.
2. **Identification of potential subcontract/subconsultant opportunities by service type in any given bid or RFP.** Consideration is given to the scope of work, specific skill sets or previous track records.

D. MBEC STAFF NOT ALWAYS ATTENDING PREBID MEETINGS AS REQUIRED

MBEC does not agree. MBEC "Instructions to Bidders" is included in all bid packages, which instruct vendors on MBEC policy and procedures. See attachment "A" Bidders' Guidelines. Through our processes, i.e., pre-bid meetings and seminars, we educate bidders on Executive Orders 01-03 and 1-93 which encompass the City's anti-discrimination policies, as opposed to Affirmative Action plans, Bidders are advised that if they need any assistance, they should contact MBEC directly. If any questions arise during a pre-bid meeting, a formal written response is prepared by our staff and forwarded as an official response through the department to each bidder.

E. MBEC IS NOT EFFECTIVELY MONITORING CONTRACTS

In the past, this may have been the case. However, under MBEC's new reorganization, there will be an Enforcement Unit, whose focus will be monitoring the City's contracting and payment procedures. The City has hired a technology consultant to design and implement a new tracking and payment verification system. The system should be operational later this fiscal year. (See Attachment "B")

F. CASE FILES ARE DISORGANIZED; PUBLIC INFORMATION IS OUTDATED AND INACCURATE

Files reviewed by auditors were files that had been in our possession for many years. This fiscal year, we will make a concerted effort to thin files, which should eliminate this problem. The MIS unit makes the necessary corrections of information relative to current vendors when updating the database. This process is being re-activated by the current Certification Coordinator and should correct the problem with outdated information in the MBEC Application Tracking system.

G. THE SUCCESS OR FAILURE OF MBEC FUNCTIONS ARE NOT MEASURED

Based on the Executive Orders, there are a series of activities that could measure the MBEC's effectiveness. The following are the basic elements for which MBEC is charged with performing under all current and prior legislation:

- ◆ The number of certifications that have been received, reviewed and completed.
- ◆ The number of RFPs/Bids, which we analyzed for range assessments, and compliance reviews.
- ◆ The number of outreach sessions held and the number of new firms identified.

Finally, the Executive Orders and Ordinance have established as MBEC's priorities:

- ◆ to increase the amount of access to contract opportunities for M/W/DS-DBEs businesses with the City of Philadelphia;
- ◆ increase the amount of actual contracts received by M/W/DS-DBEs; and
- ◆ to enforce the provisions of City Council Ordinance 030125 for reporting payment and compliance.

In FY 05, MBEC will work with the Office of Budget and Program Evaluation ("OBPE") to develop meaningful measures.

III. MBEC'S STATED PLANS AND GOALS BEFORE IT RECEIVED THE AUDIT

As stated in the Introduction, I came to MBEC with these initial plans and goals (please see Attachment "C"):

1. To explore outsourcing the certification process;
2. To enhance MBEC's monitoring, compliance and enforcement functions by creating an Enforcement, Compliance and Monitoring Unit within MBEC; and
3. To create a Special Projects Unit within MBEC (a new venture for the department), which would concentrate on marketing our vendors, both internally to City Departments and externally to private entities, outreach to our vendors, and various other public relations functions.

After I arrived at MBEC, I quickly noticed that there was a lack of memorializing MBEC's systems. I started working with Candace Hitchcock, Deputy Director of Operations, to begin this process by creating manuals and internal memoranda outlining our policies and procedures (please see Intake Flow Chart, Attachment "D").

I also quickly came to the conclusion that the department needed restructuring to better service our constituents. With Janice Davis' recent approval, I now have the authority to hire the necessary personnel in order to accommodate fully MBEC's staffing needs, which is crucial to MBEC functioning in a more effective and efficient manner (please see the MBEC Organizational Chart, Attachment "E").

Mario Trevino's workplan (Attachment "F") completely complemented my plans for moving MBEC in the right direction.

IV. MBEC'S ACCOMPLISHMENTS BEFORE RECEIVING THE AUDIT

In the approximately two-plus months since I became MBEC's Director, I have instituted many changes in regard to its restructuring, thereby initiating the process necessary to make the department more efficient, productive and responsive:

- I instituted weekly personnel performance reports/weekly strategic plans (please see Attachment "G")

- I restructured the department's alignment (please see Attachment "E")

- I am investigating the possibility of outsourcing the certification process. To this end: I scheduled a meeting with Bill Grab and Linda McBride-Brock to discuss union issues related to outsourcing the certification process; I am in the process of creating an RFP to outsource the certification process; and I am talking to the Law Department about the possibility of accepting certifications from other certification-granting entities

- Candace Hitchcock has begun the process of memorializing our policies and procedures (please see Attachment "D")

- I hired an Enforcement Deputy, Wendy Staton, Esquire

- I sent out FY '05 Compliance Plan letters to all City of Philadelphia Department Heads and Commissioners.²

- I instituted a monthly meeting for our certified vendors featuring private sector entities (please see Attachment "H").

- I met with the following business and community groups:

- NAACP
- Contractor's Roundtable
- Renaissance
- Hispanic Chamber of Commerce
- Asian American Federation of Pennsylvania
- Asian-American Chamber of Commerce
- Pan Asian Federation
- The Enterprise Center

The 12 Club
Hip Hop Alliance
Center City Civic Association
Abo Haven

- I met with the following private business and public entities:

PECO/Exelon
Wachovia Bank
GPUAC
PIDC
PCDC
Philadelphia International Airport (Airport Management Staff; Marketplace
Redwood)
InTech

- I have attended the following forums/conferences/receptions:

Minority Economic Development Summit
National Minority Contractor's Association Annual Meeting
Airport Advisory Minority Council Annual Association Meeting
African-American Leadership Forum (Economic Development Track)
Mayor's Young Professionals Reception

- I have met with numerous members of the African-American, Hispanic, Asian, Women and Disabled business members and leaders
- I designated Barbara Oliver, MBE Specialist II, to head up our Outreach efforts. She has already held three vendor events since I have been at MBEC.

In addition to the above referenced changes, these, are the general duties and responsibilities that I (e.g., City Council appearances, weekly Legislative Affairs meetings, MBEC staff meetings, creating and participating on TIF Oversight Committees, handling day-to-day staff and vendor issues/complaints, etc.) and my staff (e.g., dealing with our certification backlog, setting ranges, attending pre-bid meetings, dealing with vendor issues, monitoring NTI and stadium projects, etc.) must handle on a daily basis as we transition from a certification/ "function-based department into a department that provides more "constituent-based" services. Frankly, it took an inordinate amount of staff time responding to the requests of the Controller's Office's during the Audit's preparation, as well as responding to the Audit with only one week to prepare.

¹ Janice Davis, Finance Director, and E. Ray Zies, First Deputy Director of Finance, selected Innovative Strategies to assist with not only MBEC's restructuring, but also to make a critical review and to suggest changes and recommendations regarding the City's overall anti-discrimination policies and procedures.

V. Recommendations from Audit with MBEC's Direct Responses

1. **Recommendation:** “create a policy manual that provides detailed technical guidance and instructions on eligibility for disadvantaged business status”;

RESPONSE: As addressed in my Initial Goals and Plans and in Innovative Strategies' workplan, there was a plan in existence prior to the Audit:

- (1) to develop an operational procedures manual, establishing office procedures, processes and controls; and
 - (2) draft a certification manual to standardize the process and to enable better oversight.
2. **Recommendation:** “develop a procedural manual describing the various processes for each MBEC function, including requiring a supervisor to examine the work of staff and fix responsibility for the review by requiring sign-off”;

RESPONSE: As addressed in my Initial Goals and Plans and in Innovative Strategies' workplan, there was a plan in existence prior to the Audit to restructure MBEC's staff and increase personnel. This plan has already been initiated with the new organizational chart, the start of the draft of the operational procedure manual and with the new hires. In conjunction with this restructuring, the responsibilities for each unit and for each position will be delineated, creating a hierarchy of duties and supervision. This new Organizational Chart will be incorporated into the operational procedures manual, as discussed in Response to Recommendation No.1, supra.

3. **Recommendation:** “use formalized checklists and other standardized forms that document the certification process, fix accountability, and ensure accurate and consistent determination of decisions”;

RESPONSE: As addressed in my Initial Goals and Plans and in Innovative Strategies' workplan, there was a plan in existence prior to the Audit to draft a certification manual to standardize the process and to enable better oversight. We already have begun reviewing and revising the certification forms in order to standardize the certification process.

4. **Recommendation:** “the city’s Director of Finance, to whom MBEC reports, must reinforce – through memoranda and other forms of communication – uncompromising adherence to moral and ethical principles”;

RESPONSE: MBEC always adheres to moral and ethical principles.

5. **Recommendation:** “establish target dates for processing applications and ensure they are met”;

RESPONSE: MBEC has a target date of 90 days after receipt of a completed application. However, due to the staffing constraints, which were acknowledged in the Audit, the target dates were not always met. As addressed in my Initial Goals and Plans and in Innovative Strategies’ workplan, the planned increase in staff, the reorganization and the adjustments to the certification process will hopefully alleviate any delays in processing. Furthermore, the Director is exploring ways to outsource the certification process, see § III and also Response to Recommendation No. 3, *supra*.

6. **Recommendation:** “develop appropriate data collection methods to track processing times”;

RESPONSE: See Response to Recommendation No. 5.

7. **Recommendation:** “consider accepting the disadvantage certification status bestowed on businesses by other states and/or government or quasi-government agencies”;

RESPONSE: MBEC accepts SBA 8(a) program status and UCP on federally-funded projects. Otherwise, I have addressed with the Law Department whether MBEC can accept similar certification status from other governmental entities under more circumstances. The Audit’s recommendation will be factored into this discussion

8. **Recommendation:** “analyze personnel needs to determine if more staff is needed or if existing staff can be utilized more efficiently”;

RESPONSE: See Responses to Recommendation Nos. 1 and 2, *supra*.

9. **Recommendation:** “develop quantifiable criteria for determining participation ranges”;

RESPONSE: The basis for arriving at the application ranges, i.e. participation percentages, is addressed in §II, *supra*. However, as addressed in Innovative Strategies' workplan, Innovative Strategies is planning to review the basis for application ranges in an attempt to assist in making this process more efficient or effective and the newly-formed Enforcement and Compliance Unit is also planning to review this basis.

10. **Recommendation:** “keep records of all bids and RFPs reviewed, and the basis for arriving at participation percentages applied”;

RESPONSE: MBEC does have a policy of keeping records of all bids and RFPs reviewed. However, the operating procedure policy being drafted, as addressed *supra*, in Response to Recommendation No. 1, will further standardize the record keeping policies of MBEC and according to the workplan by Innovative Strategies, the consultant is addressing the record keeping and retention for MBEC. Regarding the application ranges, i.e. participation percentages, please refer to § -II and the Response to Recommendation No. 9, *supra*.

11. **Recommendation:** “re-evaluate the unwritten MBEC policy of not attending pre-bid meetings for projects under \$2 million”;

RESPONSE: MBEC has a policy of attending as many pre-bid meetings as staffing permits.

12. **Recommendation:** “explore the feasibility of getting an additional city vehicle assigned to the unit”;

RESPONSE: The two vehicles MBEC had were taken away on April 1, 2004 because the Managing Director deemed these vehicles as “decommissioned.” The Director will utilize this Audit in his efforts to obtain city vehicles assigned solely for MBEC's use. Due to increased staff and increased outreach and monitoring functions, I will ask for three vehicles.

13 **Recommendation:** “ensure staff make optimum use of the city's car share program”;

RESPONSE: MBEC will look into the best way to deal with the car situation and will work with other City agencies to figure out what options would best suit MBEC.

14. **Recommendation:** “develop standards for file organization and content”;

RESPONSE: As addressed in my Initial Goals and Plans and in Innovative Strategies’ workplan, there was a plan in existence prior to the Audit to restructure MBEC’s staff and increase personnel. This plan has already been initiated with the new organizational chart, the start of the draft of the operational procedure manual and with the new hires. In conjunction with this restructuring, the responsibilities for each unit and for each position will be delineated, creating a hierarchy of duties and supervision. This new Organizational Chart will be incorporated into the operational procedures

15. **Recommendation:** “purge the MBEC database of businesses whose certification has expired”;

RESPONSE: MBEC will take this Recommendation under advisement and ensure that it is incorporated in its new codified policies and procedures and appropriately assigned to a staff person designated on the Organizational Chart.

16. **Recommendation:** “develop and implement quality control procedures”;

RESPONSE: As addressed in my Initial Goals and Plans and in Innovative Strategies’ workplan, there was a plan in existence prior to the Audit to draft a certification manual to standardize the process and to enable better oversight. We already have begun reviewing and revising the certification forms in order to standardize the certification process.

In conclusion, I will specifically address the recommendations that were made in the Audit that have not already been addressed and/or implemented prior thereto by either Innovative Strategies or myself. After the completion of the Certification Manual and the Operational Systems and Procedures Manual, Deputy Director of Operations and the Deputy Director of Enforcement will be responsible to review those manuals on an annual basis to address any internal or external changes that may have occurred. A function of that joint review will be to ensure compliance with the City’s anti-discrimination policy and any new developments in that area. Regarding the accuracy in the public database, I plan to address with our technical support staff the capabilities of our existing database to: track the expiration of certifications; track the federal 60-day date for incomplete applications; and generate an annual participation report. Also, as recommended in the Audit, I would like to explore whether the current database or another vehicle can distinguish special and/or limited certifications, i.e. “airport only” contract work.

¹ Janice Davis, Finance Director, and E. Ray Zies, First Deputy Director of Finance, selected Innovative Strategies to assist not only with MBEC's restructuring, but also to make a critical review and to suggest changes and recommendations regarding the City's overall anti-discrimination policies and procedures.

² These letters listed each Department's Fiscal Year '03 and mid-year '04 Minority/Women/Disabled Owned Business Enterprises' ("M/W/DS-DBE") participation rates; it asked for each Department's Fiscal Year '05 contracting plans, and asked for (if contracts had already been let out) M/W/DS-DBE participation data.