EXECUTIVE ORDER NO. 1-21

ANTIDISCRIMINATION POLICY
RELATING TO THE PARTICIPATION OF
MINORITY, WOMAN AND DISABLED OWNED BUSINESSES
IN CITY CONTRACTS

WHEREAS, it is the policy of the City of Philadelphia to provide an equal opportunity for all businesses 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, inequities in the utilization of Minority, Woman and Disabled Owned Businesses in City Contracts persist as evidenced by the City’s Annual Disparity Study and Participation Reports of For-Profit City Contracting Activity, thereby necessitating continued and further remedial action; and

WHEREAS, the Office of Economic Opportunity, successor to the Minority Business Enterprise Council, was created in 2008 to administer a comprehensive City-wide approach to advance economic opportunities for Minority, Woman and Disabled Owned Businesses and promote employment opportunities for diverse workers seeking jobs in the local economy; and

WHEREAS, more than 3000 minority, woman and disabled owned business owners have registered with the Office of Economic Opportunity representing their businesses as ready, willing and able to compete for and to participate in City contracts on an equitable basis with other firms;

NOW, THEREFORE, I, James F. Kenney, 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. Background and Applicability

A. The Background as set forth above is incorporated herein by reference.

B. With respect to Bids advertised and/or opened on or after January 1, 2021, this Executive Order shall supersede Executive Order 03-12. This Executive Order shall not be construed to affect the terms, conditions, or other legal obligations, including any Bidder’s M/W/DSBE participation commitments, relating to Bids and contracts opened and/or awarded prior to January 1, 2021.

SECTION 2. Definitions
A. **Annual Disparity Study.** An up-to-date spending analysis, performed in accordance with Section 6-109 of The Philadelphia Home Rule Charter and Chapter 17-1500 of The Philadelphia Code, which analyzes the participation of Minority (“MBE”), Woman (“WBE”) and Disabled (“DSBE”) owned business enterprises (collectively, “M/W/DSBE”) in City Contracts. The Annual Disparity Study shall also contain an assessment of Workforce diversity in City Public Works Contracts including aspirational goals for the employment of minority and female tradespersons as journeymen and apprentices.

B. **Annual Participation Goal.** An overall aspirational Goal for M/W/DSBEs participating in City Contracts for the upcoming fiscal year, devised in accordance with Section 6-109 of The Philadelphia Home Rule Charter and Chapter 17-1500 of The Philadelphia Code.

C. **Benchmark.** A Department’s annual goal of projected purchasing/contracting with M/W/DSBEs, as approved by OEO, and expressed as a percentage of the overall purchasing/contracting by that Department for the upcoming fiscal year.

D. **Best and Good Faith Efforts.** A Bidder’s efforts, as evaluated by OEO, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/W/DSBEs in a specific City Contract. The expressed desire to self-perform work with its own workforce, equipment and materials will not excuse a Bidder from its responsibility to exercise Best and Good Faith Efforts.

E. **Bid.** A quotation, proposal or offer by a Bidder to provide labor, materials, equipment, supplies or services to the City for a price. For purposes of this Order, the term “Bid” shall also refer to “Application” as that term is used in Chapter 17-1400 of The Philadelphia Code.

F. **Bidder.** Any person or business that submits a Bid. For purposes of this Order, the term “Bidder” shall also refer to “Applicant” as that term is used in Chapter 17-1400 of The Philadelphia Code.

G. **City Contract.** A contract funded in whole or in part by the City or administered by the City, whether competitively bid as such term is defined in Section 8-200 of The Philadelphia Home Rule Charter or non-competitively bid as such term is defined in Chapter 17-1400 of The Philadelphia Code, within the following categories:

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

H. **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.
I. Commercially Useful Function (CUF). For contractors and subcontractors, an M/W/DSBE performs a Commercially Useful Function when it performs a distinct element of a City Contract (as required by the work to be performed in accordance with the bid specifications) which is worthy of the dollar amount of the M/W/DSBE’s contract and the M/W/DSBE carries out its responsibilities by managing and supervising the work involved and actually self-performing at least twenty percent (20%) of the work of the contract with its own workforce. For suppliers, an M/W/DSBE performs a Commercially Useful Function when it is responsible for sourcing the material, negotiating price, determining quality and quantity, ordering the material, and paying for it from its own funds. Commercial usefulness will be evaluated and determined by the OEO on a bid-by-bid basis as informed by prevailing industry standards and the M/W/DSBE’s NAIC Codes and may require, without limitation, evidence of a warehouse, distribution equipment, and certified payroll records.

J. Compliance Plan. A written plan produced by a Department and approved by the OEO that details how a Department will achieve the goals and objectives of this Order, including its Benchmark during the fiscal year. The Compliance Plan must include the Department’s forecast of eligible contracts for the upcoming fiscal year and must demonstrate a committed alignment with the Annual Participation Goal.

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

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

M. Disabled Business Enterprise or DSBE. A for-profit business certified by a Third-Party Certifying Agency 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.

N. 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, and has a medical record of such impairment.

O. 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 and certified in accordance with those federal regulations.
P. **Discrimination.** Any action or pattern of disparate treatment because of race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age or disability 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.

Q. **Economic Opportunity Plan (EOP).** A plan submitted, pursuant to Chapter 17-1600 of The Philadelphia Code, by a Bidder that provides meaningful and representative opportunities for M/W/DSBEs to participate in all phases of a Covered Project or Contract and provides for an appropriately diverse workforce in all phases of the contract with regard to minority persons and women.

R. **Eligible Joint Venture.** A joint venture in which one or more of the partners is a registered M/W/DSBE that is responsible for a Commercially Useful 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.

S. **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.

T. **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.

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

V. **Minority Business Enterprise or MBE.** A for-profit business certified by a Third-Party Certifying Agency, 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.

W. **Minority Person.** A person who is:
   - African American, having origins in any of the Black racial groups in Africa;
   - Hispanic American, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
   - Asian American, having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands; or
   - Native American, having origins in any of the original peoples of North America.
X. **OEO Officer.** An official of a Department with decision-making authority over the Department’s purchasing and contracting activities, who, in collaboration with OEO, is responsible for the development of the Department’s Compliance Plan.

Y. **Office of Economic Opportunity (OEO).** An agency within the Commerce Department created to administer a comprehensive City-wide approach for advancing economic opportunities for M/W/DSBEs and promoting employment opportunities for diverse workers seeking jobs in the local economy. OEO administers this Order and Chapter 17-1600 of The Philadelphia Code and oversees quality assurance for the performance of the responsibilities created by these laws.

Z. **Participation Ranges.** Contract participation ranges established by OEO to offer the maximum practicable opportunity for M/W/DSBE participation on City Contracts.

AA. **Participation Report.** A quarterly report, prepared and issued by OEO, of the dollar amount and percentage value of M/W/DSBE participation on City Contracts awarded to for-profit businesses; quarterly reports are reconciled and compiled as an annual report submitted to the Mayor and City Council by November 1st of each year.

BB. **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, Philadelphia Housing Authority (PHA), Philadelphia Housing Development Corporation (PHDC), Philadelphia Industrial Development Corporation (PIDC), Philadelphia Redevelopment Authority (PRA), Delaware River Waterfront Corporation (DRWC), the Hospitals and Higher Education Facilities Authority of Philadelphia (HEFAP) and Philadelphia Facilities Management Corporation (PFMC) for Philadelphia Gas Works (PGW).

CC. **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 conduct in the solicitation of contract participants as part of a Bid and that the Bidder will not engage in discrimination in the performance of a City Contract if awarded.

DD. **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, Bidder is rebuttably presumed to have made Best and Good Faith Efforts.
EE. **Third-Party Certifying Agency.** An agency, recognized by OEO, as certifying MBEs, WBEs and/or DSBEs based upon the real, substantial and beneficial ownership and control of the minority, female or disabled owners.

FF. **Traditional 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 Traditional 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 Traditional 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.

GG. **Woman Business Enterprise or WBE.** A for-profit business certified by a Third-Party Certifying Agency 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. Economic Opportunity Cabinet**

A. **Economic Opportunity Cabinet (“EOC”) Established.** An Economic Opportunity Cabinet is established to provide guidance and create accountability measures for the development and implementation of City-wide goals for the robust participation of M/W/DSBEs in City contracts. The EOC shall also provide accountability measures for substantially increasing the membership and hourly deployment of minority and female tradespersons in the building trades unions and construction industry.

B. **Membership.** In recognition of their authority as overseers of critical government operations, the following members of the EOC are appointed by the Mayor: Mayor’s Chief of Staff, Managing Director and his/her deputies as decided by the Mayor, Finance Director, City Solicitor, Commerce Director, Director of Planning and Development, Deputy Mayor for Children and Families, Health Commissioner, Director for Labor, Chief Integrity Officer, Chief Administrative Officer, Chief Diversity, Equity and Inclusion Officer (“CDEIO”), the Procurement Commissioner, and such other officers as the Mayor may appoint.

C. **Meetings.** The EOC shall meet with and advise the Mayor and meet no less than quarterly. Meetings shall be scheduled by the Deputy Director of Commerce-OEO in coordination with the Mayor’s Office.
SECTION 4. Continuation, Purpose and Functions of the Office of Economic Opportunity

A. Office of Economic Opportunity (“OEO”). The Office of Economic Opportunity originally established by Section 2 of Executive Order 14-08 is hereby continued as set forth in this Section 4. The OEO shall be located in the Commerce Department to administer a comprehensive City-wide approach for advancing economic opportunities for M/W/DSBEs and promoting employment opportunities for diverse workers seeking jobs in the local economy. OEO administers this Order and Chapters 17-1500 and 17-1600 of The Philadelphia Code and oversees quality assurance for performance of the responsibilities created by those laws.

B. Structure. The Deputy Director of Commerce-OEO will manage the daily activities of this office. The Deputy Director of Commerce-OEO will receive policy and strategic direction from the CDEIO and operational direction from the Commerce Director. The Deputy Director of Commerce-OEO shall report to the CDEIO and the Commerce Director to ensure the coordination of diversity and inclusion issues and access to business growth and development programs and services within the Department of Commerce. The OEO shall have sufficient resources to carry out the requirements of this Executive Order.

C. Functions.

1. OEO Registry. OEO shall establish standards for identifying Third-Party Certifying Agencies and shall maintain a Registry of M/W/DSBEs organized according to North American Industry Classification System codes (NAICs) and such other codes as may be beneficial. OEO may, from time to time, develop additional methods for the recognition of minority persons, women, disabled persons, and disadvantaged small business owners as sourcing prospects for Majority Owned Businesses and as participants on City Contracts.

2. Compliance Plans and Benchmarks. OEO will require the submission of a Compliance Plan and Benchmark by each Department for OEO evaluation and approval. No Compliance Plan shall become effective without the approval of OEO. OEO shall determine whether a Department is awarding City Contracts consistent with and in pursuit of the Benchmark established within its Compliance Plan. Failure to submit a Compliance Plan that is acceptable to the OEO may result in OEO’s recommendation to the Finance Director to suspend the Department’s spending on future contracts until submission of a corrective Plan.


   a. OEO shall have the authority to establish M/W/DSBE Participation Ranges for each City Contract and for EOPs for transactions requiring City Council approval. All M/W/DSBE participation ranges shall be targeted to offer the maximum practicable opportunity for M/W/DSBE participation. In devising participation ranges, OEO will consider the type and scope of City Contract, the estimated dollar value of the City Contract, the number of M/W/DSBEs within the Greater Philadelphia region available to participate in that type of City Contract, historic evidence of discrimination against minorities, women or disabled persons in the industries
pertinent to the awarding Department’s contracts, including the extent of the City’s passive participation in such discrimination, and any other appropriate factors.

b. For EOPs, OEO shall also include the Diverse Workforce Goals established by the Annual Disparity Study; plans for the implementation of these goals, monitoring and enforcement is administered by the Department of Labor.

c. OEO, with direction from the CDEIO and EOC, shall also consider any and all appropriate race and gender neutral strategies that allow Departments to identify additional opportunities for M/W/DSBE participation and eliminate contract requirements which unduly restrict participation by M/W/DSBEs; such strategies may include, subject to legal requirements, relaxation of bonding, insurance, extensive experience and capitalization requirements and, where feasible, contract segmentation.

d. The Deputy Director of Commerce-OEO may convene, as needed, an OEO Advisory Board for the purpose of making recommendations relating to best practices and business development strategies.


a. OEO shall, at its discretion, attend pre-bid and pre-proposal meetings and participate on all City Contract selection committees evaluating Bids.

b. OEO shall review Bids to determine whether they are Responsive under this Order before the award of a City contract. OEO’s evaluation will include a preliminary determination of Commercial Usefulness of the committed M/W/DSBE participation.

5. Post-Award Compliance Review. OEO will perform post-award compliance reviews to ensure that Departments and Bidders are complying with the goals and objectives of this Executive Order. Such reviews will include evaluation of contract data, documentation and reports.

6. Participation Reports.

a. OEO shall provide an Annual 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 and City-Related Special Projects as well as by DBEs on federally assisted City Contracts. The Annual 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 Annual Participation Report shall also include the number of prime contracts awarded to M/W/DSBEs by the City.

b. OEO shall provide a quarterly Participation Report to the Mayor and City Council on or before February 1st, May 1st, August 1st, and November 1st of each year.
7. Annual Disparity Study and Annual Participation Goal. In furtherance of Section 6-109 of The Philadelphia Home Rule Charter and Chapter 17-1500 of The Philadelphia Code, OEO shall oversee the implementation of this study and analysis of for-profit spend in City Contracts, comparing the Annual Participation Report data to the percentage of qualified MBEs, WBEs and DSBEs available to participate in City Contracts. The study shall also include an analysis of workforce demographic data derived from certified payroll records. Information from these analyses will inform the Annual Participation Goal and Workforce Diversity Goals along with any other relevant data.

8. Traditional Disparity Study. From time to time, OEO may solicit and contract for the performance of a comprehensive Traditional Disparity Study to determine whether statistically significant disparities related to discrimination exist in any tier of City contracting.

9. 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. City Contracts with nonprofit organizations shall include a provision requiring that the nonprofit cooperate with OEO in its collection of the following data as deemed pertinent by OEO: (a) identifying the race, gender, disability status, and ethnic composition of its workforce and its board of directors; (b) a list of the nonprofit’s five highest dollar value M/W/DSBE suppliers of products and services; and (c) the nonprofit’s written equal opportunity statement, including an assurance of the nonprofit’s efforts to maintain a diverse workforce and board of directors, and operation of a fair and effective supplier diversity program.

10. Training. OEO shall provide training programs for OEO Officers and other City employees. Training programs shall be designed to provide knowledge and develop the skills required by City employees to increase M/W/DSBE percentage participation in City Contracts and to enforce compliance. Training programs shall be scheduled regularly.

SECTION 5. Departments and Quasi-Public Agencies

A. Departments

1. Departments on or before March 1st of each year shall deliver a written Compliance Plan to OEO 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 programs. In creating its Compliance Plan and in determining its Benchmarks, 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 OEO, certain classes of purchasing/contracting by a Department may be exempted from inclusion in the Compliance Plan where few or no M/W/DSBEs are available to compete for those opportunities.
2. Each Department shall collect, at a minimum, the following data on City Contracts, and City-Related Special Projects awarded to for-profit businesses using the OEO-approved software: dollar amount participation of M/W/DSBEs; percentage participation of M/W/DSBEs; Departments’ payments to prime contractors; and Contractors’ payments to M/W/DSBE subcontractors. This data, at a minimum, shall also be collected for federally assisted City Contracts with DBE participation. Each Department shall ensure timely, accurate and complete data submission and acknowledgements from contractors and subcontractors in order to generate Quarterly and Annual M/W/DSBE and DBE Participation Reports, as well as ad hoc reports that may be requested from the Mayor, Managing Director, City Solicitor, Inspector General, and other City, State or Federal entities. OEO shall assist Departments, as needed, in maintaining timely, accurate and complete electronic records.

3. Departments shall monitor Bidders’ compliance with contractual requirements as well as this Executive Order. Monitoring will include but not be limited to: review of contract data, documentation and reports; virtual or in-person interviews with subcontractors, employees, and project supervisory and managerial personnel; site visits to a Bidder’s office, other place of business and/or job site to ascertain compliance.

4. Departments shall invite OEO staff to all pre-bid and pre-proposal meetings and all selection committee meetings.

5. Departments shall work with OEO 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 registered with the City.

6. Each Department shall meet quarterly with OEO to monitor its progress toward achieving the Department’s annual Benchmark. Any Department that fails to achieve its Benchmark after two consecutive quarters will meet with OEO to develop and implement strategies to increase M/W/DSBE utilization. Failure to increase M/W/DSBE utilization within the next two quarters shall result in OEO referring the Department to the CDEIO for additional action.

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

8. Each Department shall comply with all of the applicable terms and conditions of this Executive Order. Any Department’s failure to comply with this Executive Order shall result in OEO referring the Department to the CDEIO for additional action.

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 Commerce Director
and Deputy Mayor for Planning and Development shall communicate this directive to all such appointees.

1. OEO 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 OEO to establish 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 Executive Order that apply to City Contracts, as appropriate, shall apply similarly 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 related to the participation of M/W/DSBEs. Bidding instructions related to this Executive 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 OEO’s determination that the submittal is nonresponsive. As part of their submission, Bidders shall identify only those M/W/DSBEs that perform a Commercially Useful Function. If a Bid contains participation by M/W/DSBEs at least equal to the M/W/DSBE participation ranges established by OEO, it is rebuttably presumed that the Bid is responsive with respect to the requirements of this Executive 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 OEO, Bidder shall submit its Documentation of Best and Good Faith Efforts, documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the contract; that submission is evaluated by OEO to determine whether the Bidder has made Best and Good Faith Efforts to include M/W/DSBEs in its Bid. In order to effectuate the objectives of this Executive Order, a Bidder’s desire to self-perform all the work of a City Contract will not be accepted as a Best and Good Faith Effort.

B. If a Bidder does not satisfy the M/W/DSBE participation ranges on a Bid and fails to submit adequate documentation of Best and Good Faith Efforts, the sufficiency of which is at the sole determination of OEO, or Bidder fails to cooperate with OEO in its review of a Bid, OEO 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 OEO, except for reasons that the Bidder failed to cooperate with OEO in the review of its Bid in which case the Bid is nonresponsive and will be rejected by the City, may file a written appeal within 48 hours as specified in the Bid with the Deputy Director of Commerce-OEO whose decision shall be final.
D. If OEO 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 Bidder may be subject to sanctions 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. Departments shall monitor Bidders’ compliance with OEO contractual requirements as well as the applicable terms of this Executive Order. In addition, to eliminate fraud and improve confidence in the integrity of the OEO program, OEO shall devise and implement strategies to monitor city-wide contracting activities and shall make findings and recommendations to the CDEIO as are necessary and appropriate to enforce this Executive Order. These actions include but are not limited to:

1. Department-based monitoring of contract performance by conducting on-site inspections, post-contract award compliance reviews, and reviewing data and acknowledgements in the OEO-approved software to ensure that committed participation is being met;

2. Monitoring M/W/DSBE data through the OEO-approved software;

3. Issuing guidelines and promulgating regulations, in interpretation of this Executive Order;

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

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

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 shall take effect on January 1, 2021, and remain in effect for a four-year period, until December 31, 2024, unless reauthorized for an additional period of time if further remedial action consistent with the objectives of this Order is required beyond that date.

January 4, 2021

James F. Kenney, Mayor