

EXECUTIVE ORDER NO. 3-12

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

BACKGROUND

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, Disparities in the utilization of Minority, Woman and Disabled Owned Businesses (“M/W/DSBEs”) in City Contracts continue to exist as evidenced by the City’s Annual Disparity Study and Participation Reports of For-Profit City Contracting Activity, thereby necessitating further remedial action; and

WHEREAS, the Office of Economic Opportunity was created in 2008 to administer a comprehensive City-wide approach to advance economic opportunities for M/W/DSBEs and promote employment opportunities for diverse workers seeking jobs in the local economy; and

WHEREAS, more than 2000 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, Michael A. Nutter, 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 September 4, 2012, this Executive Order shall supersede Executive Orders 02-05 and 14-08. This Executive Order shall not be construed to affect the terms, conditions, or other legal obligations, including any Bidder M/W/DSBE participation commitments, relating to Bids and contracts opened and/or awarded prior to September 4, 2012.

SECTION 2. Definitions

A. Annual Disparity Study. An up-to-date study, 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 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 Participation Reports 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 OEO, and expressed as a percentage of the overall contracting/purchasing by that Department in a given year.

C. 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 and cannot be used as a basis for requesting a reduction or waiver of the participation ranges.

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

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

F. Certifying Agency. An agency, recognized by OEO, as certifying Minority (MBE), Woman (WBE) and Disabled (DSBE) Business Enterprises based upon the beneficial ownership and control of the minority, female or disabled owners.

G. City Contract. A contract funded in whole or in part by the City or administered by the City, whether competitively bid 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
- Miscellaneous 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 Executive Order, including its Benchmark in a given year.

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 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.

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 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.

Q. 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.

R. 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, female and disabled persons.

S. 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.

T. 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.

U. 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.

V. Goal Setting and Participation Ranges. The process of establishing goals and contract participation ranges which aspire to increase the participation of M/W/DSBEs as prime contractors, joint venture partners and subcontractors on City Contracts and City Related Special Projects. This process is informed by the Annual Disparity Study and consideration of race neutral and narrowly tailored race-conscious methods based upon an analysis of factors such as historical contracting data, Department Benchmarks, Participation Reports and the availability of M/W/DSBEs.

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

X. 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.

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

Z. Minority Business Enterprise or MBE. A for-profit business certified by a 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.

AA. 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.

BB. M/W/DSBE. Collective reference to MBEs, WBEs and DSBES.

CC. OEO Officer. An official of a Department with decision-making authority over the Department's procurement and contracting activities, who, in collaboration with OEO, is responsible for the development of a departmental strategy to achieve Minority, Women, and Disabled Business (M/W/DSBE) participation on Department contracts in support of the City's Economic Opportunity Strategy: "Inclusion Works" and the Department Benchmark.

DD. 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 performance of the responsibilities created by Section 17-1500 of The Philadelphia Code.

EE. Participation Report. A quarterly report prepared and issued by OEO 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.

FF. 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, PHDC, PIDC, Philadelphia Redevelopment Authority, Delaware River Waterfront Corporation, the Hospitals and Higher Education Facilities Authority of Philadelphia and PFMC (for PGW).

GG. 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.

HH. 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 Best and 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 OEO that the bidder exercised Best and Good Faith Efforts to comply with the M/W/DSBE participation requirements.

II. Woman Business Enterprise or WBE. A for-profit business certified by a 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. Continuation and Purpose of the Economic Opportunity Cabinet

A. Economic Opportunity Cabinet (“EOC”). The Economic Opportunity Cabinet established by Section 1 of Executive Order 14-08 is hereby continued as set forth in this Section 3. The purpose and authority of the EOC shall be to oversee the development and implementation of City-wide goals for the robust participation of Minority (“MBE”), Woman

(“WBE”) and Disabled (“DSBE”) owned business enterprises (collectively, “M/W/DSBEs”) in City contracts, to advance economic opportunities for M/W/DSBEs and to establish benchmarks for substantially increasing the membership and hourly deployment of minority and female tradespersons in the building trades unions and construction industry.

B. Membership. Members of the EOC shall be the Mayor, Managing Director, Finance Director, City Solicitor, Chief Integrity Officer, Inspector General, Deputy Mayor for Planning and Economic Development, Deputy Mayor for Transportation and Utilities, Deputy Mayor for Health and Opportunity, Deputy Mayor for Public Safety, Deputy Mayor for Environmental and Community Resources, and the Procurement Commissioner.

C. Meetings. The EOC shall be chaired by the Mayor and meet no less than quarterly.

SECTION 4. Continuation, Purpose and Functions of the Office of Economic Opportunity

A. Office of Economic Opportunity (“OEO”). The Office of Economic Opportunity 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 Chapter 17-1600 of The Philadelphia Code and oversees performance of the responsibilities created by Section 17-1500 of The Philadelphia Code.

B. Structure. An Executive Director of the OEO will manage the daily activities of this office. The Executive Director will receive policy and strategic direction from the Economic Opportunity Cabinet and will report to the Deputy Mayor for Planning and Economic Development for administrative support and to ensure the coordination of and access to business growth and development programs and services within the Department of Commerce.

C. Functions.

1. OEO Registry. OEO shall establish standards for identifying Certifying Agencies and shall maintain a Registry of M/W/DSBEs organized according to North American Industry Classification System codes (NAICs). 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. OEO shall have the authority to direct the submission of Compliance Plan(s) by any Department and shall approve the Compliance Plans and Benchmarks. No Compliance Plan or Benchmark 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 in its Compliance Plan.

3. **Participation Ranges and Related Business Development Strategies.** OEO shall have the authority to approve the M/W/DSBE participation ranges set for each City Contract and no M/W/DSBE participation range proposed for a City Contract shall become effective without the approval of OEO. All M/W/DSBE participation ranges set pursuant to Section 5 A. 2. shall be targeted to offer the maximum practicable opportunity for M/W/DSBE participation on City Contracts. OEO, with direction from the 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. The Executive Director of OEO will convene, as needed, an OEO Advisory Board for the purpose of making recommendations relating to best practices and business development strategies.

4. **Bid Evaluation.**

- i. OEO shall be invited by every Department to all pre-bid meetings and shall participate on all City Contract selection committees evaluating bids.
- ii. 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. **Monitoring and Post Award Compliance Review.** OEO will monitor awarded City Contracts containing M/W/DSBE commitments and may perform post award compliance reviews to ensure that Bidders are complying with the goals and objectives of this Executive Order. Such reviews may include site visits to a Bidder's office, other place of business and/or job site to ascertain whether a Bidder has satisfied its M/W/DSBE commitments made under a City Contract.

6. **Data Collection and Participation Reports.**

- i. OEO 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 a quarterly basis; in the event the City Contract was awarded in a previous Fiscal Year, OEO shall only report dollar amounts achieved in the Fiscal Year subject to the Participation Report. OEO shall assist Departments in maintaining Department records showing DBE participation on federally assisted City Contracts. To the extent such data is available, OEO shall also report on

payments made to M/W/DSBEs by Bidders awarded City Contracts.

- ii. 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 as described above. 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. In addition, each Department shall report to OEO, for inclusion in the annual 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.

7. Annual Disparity Study. In furtherance of Section 6-109 of The Philadelphia Home Rule Charter and Chapter 17-1500 of The Philadelphia Code, OEO shall assist in the implementation of an Annual Disparity Study which will compare annual 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.

8. Workforce Diversity. Economic Opportunity Plans require, in addition to Best and Good Faith Efforts for M/W/DSBE inclusion, workforce goals for minority and female workers. Executive Order 15-11 requires consideration of project labor agreements (“PLAs”) for City construction contracts with an estimated value of Five Million Dollars; where a City construction project has a PLA, the PLA must contain workforce diversity goals for both the trades unions and contractors. OEO, with support from the City’s Labor Standards Unit, will evaluate the number of minority and female workers employed on City construction projects and, to the extent the information is made available by each of the Building Trades Unions, OEO will evaluate and report on 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. The Executive Director of OEO will convene, as needed, meetings of the Mayor’s Commission on Construction Industry Diversity, an advisory committee created by Executive Order 05-08 and constituted of business, academic and labor leaders for the purpose of studying, inter alia, minority and female utilization in the Philadelphia building trades.

9. Disparity Study. It shall be City policy for OEO to contract for the performance of a comprehensive 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.

10. 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 generally subject to the City's M/W/DSBE participation ranges, all 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: (i), identifying the race, gender, disability status, and ethnic composition of its workforce and its board of directors, a list of the nonprofit's five highest dollar value M/W/DSBE suppliers of products and services, and (ii) the nonprofit's written equal opportunity statement 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.

11. 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, to improve the diversity of nonprofit organizations and to enforce compliance. Training programs shall be scheduled regularly.

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 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. 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 OEO, 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(s) to be awarded by the Department, and shall submit such proposed ranges for approval by OEO. Departments shall seek to provide maximum practicable opportunities for M/W/DSBE participation on each City Contract. Where an EOP is required for a City Contract

or Covered Project, the Department shall also propose workforce diversity goals for the employment of minority persons and females.

3. Departments shall invite OEO staff to all pre-bid and pre-proposal meetings and all selection committee meetings, which OEO Staff may attend at their discretion.

4. 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.

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

6. 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.

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 Deputy Mayor for Planning and Economic 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 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 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 and the Department, 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 and the Department, and a Bidder submits a Request For Reduction/Waiver of those participation ranges, OEO will evaluate 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 of the work of a City Contract will not be accepted as a valid basis for a Reduction/Waiver of the participation ranges.

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 OEO determines that Bidder has not made a Best and Good Faith Effort 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 Executive Director of 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, OEO may recommend to the Procurement Commissioner or 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. OEO shall conduct post award compliance monitoring pursuant to Section 4 C. 5. of this 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 EOC as are necessary and appropriate to enforce this Executive Order. These actions may include:


1. Department based monitoring of contract performance by conducting on-site inspections and post-contract award compliance reviews to ensure that committed participation is being met;
2. Monitoring prime contractors' payments to M/W/DSBEs through electronic payment tracking or other means;

3. Issuing guidelines and promulgating regulations, in interpretation of this Executive Order;
4. Recommending to the City Solicitor contractual provisions, which may include liquidated damages, 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 OEO determines that a Bidder has failed to comply with contractual provisions requiring M/W/DSBE participation. OEO 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.

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, 2012 to September 4, 2016 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 20, 2012



Michael A. Nutter, Mayor