



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR
MARTIN J. WALSH

EXECUTIVE ORDER
OF
MAYOR MARTIN J. WALSH

An Executive Order Establishing Equitable Procurement Goals in Support of Minority and
Woman-Owned Businesses

WHEREAS, the City of Boston acknowledges the importance of addressing any historic and structural barriers that may contribute to inequitable economic investment in businesses across the City of Boston; and that such barriers may limit the actualization of the City's economic and civic potential, especially as it impacts minority- and woman-owned businesses; and

WHEREAS, given the City's spending power it is imperative that the City's policies encourage and promote full, fair and equitable access to public contracts for minority- and woman-owned businesses; and

WHEREAS, pursuant to City of Boston Code, Chapter IV, Section 4-4, "Promoting Minority and Women Owned Business Enterprises in the City of Boston," as enacted in 2008 and amended in 2017, the Equity and Inclusion Unit of the Mayor's Office of Economic Development ("Equity and Inclusion Unit") was tasked with establishing a supplier diversity program that would include affirmative marketing, and overseeing programs to support meaningful participation in City contracts by small and local businesses including minority-owned business enterprises (MBEs) and woman-owned business enterprises (WBEs); and

WHEREAS, since 2008, the Equity and Inclusion Unit has engaged in various, ongoing race-, ethnicity-, and gender-neutral programs to support and promote the participation of small and local businesses, including MBEs and WBEs in City contracts. The City offers technical assistance to small businesses through expert consultants to assist with bookkeeping systems, business coaching, financial planning, etc. The City also offers grant programs for small local businesses through the ReStore and Design programs, and the Childcare Entrepreneur Fund. The City, through the Equity and Inclusion Unit, also offers business training and development

business coaching, financial planning, etc. The City also offers grant programs for small local businesses through the ReStore and Design programs, and the Childcare Entrepreneur Fund. The City, through the Equity and Inclusion Unit, also offers business training and development workshops on City procurement policies and practices, and information sessions to alert small businesses to current and upcoming City contracting opportunities, and semi-annual opportunity fairs where City departments inform businesses of the nature of their contract opportunities, procurement practices, and upcoming opportunities; and

WHEREAS, the City has initiated comprehensive race-, ethnicity-, and gender-neutral procurement procedures designed to increase transparency, information, and opportunity for small and local businesses, including MBEs and WBEs. These procedures include connecting all departments to the Equity and Inclusion Unit for each contract, and the City has trained hundreds of employees involved in contracting on these procedures. These processes support fuller access to City contracting opportunities and have established a procedural framework through which policy initiatives related to equitable procurement supported by the Disparity Study can be implemented; and

WHEREAS, as part of this work, the Equity and Inclusion Unit, in conjunction with the Administration and Finance Cabinet, has investigated the number of City contracts and City spending that went to MBEs and WBEs; and

WHEREAS, as part of this work, the Equity and Inclusion Unit has engaged in ongoing conversations with hundreds of small and local businesses, including MBEs and WBEs, about the challenges and barriers that confront those businesses in operating in Boston and participating in City contract opportunities; and

WHEREAS, in order to more fully understand the issues of business availability and utilization that City personnel in the Equity and Inclusion Unit and the A&F Cabinet had been working on, investigating and observing, the City retained BBC Research & Consulting to conduct a disparity study to assess whether barriers exist in Boston that impede the ability of minority- and woman-owned firms to compete for City contracts; and

WHEREAS, BBC has completed a disparity study that assessed whether substantial disparities exist between the availability and utilization of minority- and woman-owned business enterprises in City procurement. The disparity study found that minority- and woman-owned business enterprises are available for 16.9% of City contract and subcontract dollars, but received only 11.0% of City-awarded contract dollars during the study period; and

WHEREAS, as part of the disparity study, BBC and the City engaged 570 local businesses, many of which were minority- and woman-owned, to learn about their experiences with City contracting and local marketplace conditions through public forums, written testimony, in-depth

interviews, availability surveys and quarterly meetings with the Supplier Diversity Advisory Council, comprised of local advocates, experts, and business owners; and

WHEREAS, the disparity study found substantial disparities between the availability and utilization of minority- and woman-owned business enterprises in City procurement; and

WHEREAS, the City has stated an intent to inform its policymaking and update its procurement goals based on the findings of the disparity study;

NOW, THEREFORE, pursuant to the authority vested in me as chief executive officer of the City of Boston by St. 1948, c. 452, § 11, and every other power hereto enabling, I hereby order and direct as follows:

I. FINDINGS

A. The disparity study, completed February 2021, provided statistical and anecdotal information about the availability and utilization of minority- and woman-owned businesses in City contracting; conditions in the marketplace for minorities, women, and minority- and woman-owned businesses; the City's processes and programs; and other key areas. The disparity study found that minority- and woman-owned business enterprises considered together are available for 16.9% of City contract and procurement dollars. Taken separately, woman-owned business enterprises are available for—that is, ready, willing and able to perform on—11.2% of City contract and procurement dollars, and minority-owned business enterprises are available for 5.7% of City contract and procurement dollars. During the same period, the disparity study found that minority- and woman-owned business enterprises taken together were awarded 11.0% of the City's contract and procurement dollars (minority-owned was 2.5% and woman-owned was 8.5%).

B. Furthermore, the disparity study, completed February 2021, found availability rates for minority- and woman-owned business enterprises by industry type as follows:

1. Construction: 14.7% WBE availability, 5.0% MBE availability
2. Construction Design: 7.1% WBE availability, 5.7% MBE availability
3. Goods and Supplies: 16.9% WBE availability, 9.6% MBE availability
4. Other Professional Services: 10.0% WBE availability, 10.5% MBE availability
5. Support Services: 2.2% WBE availability, 2.6% MBE availability

C. The City of Boston finds based on the disparity study and all other information, reports, and data that it has a compelling governmental interest and a strong basis in evidence to remedy the past and present effects of discrimination, disparities, obstacles, and barriers in its

marketplace between the utilization and availability of minority- and woman-owned business enterprises.

D. The City of Boston also finds after serious, good-faith consideration that race-, ethnicity- and gender-neutral measures and efforts alone are insufficient to address and remedy the problem of race, ethnic and gender discrimination, disparities, obstacles, and barriers in its marketplace relating to the utilization of minority- and woman-owned business enterprises. In making this finding, the City specifically considered the fact that it has engaged in multiple race-, ethnicity-, and gender-neutral measures to support meaningful participation by WBEs and MBEs in City contracts without eliminating the disparities in utilization as detailed by the disparity study.

II. CITY GOALS

A. Based on the disparity study findings and all other information presented in the report, including information as summarized in Section I and the adjustment factors, and all other relevant information and documentation observed and obtained by the Equity and Inclusion Unit and other City departments, the City of Boston shall establish an overall annual aspirational goal of 25% minority- and woman-owned business enterprise utilization on discretionary contract and procurement spending, with an overall annual aspirational goal of 15% utilization for woman-owned businesses and an overall annual aspirational goal of 10% utilization for minority-owned businesses.

B. The City shall seek to achieve these overall annual goals through the implementation of uniform procedures that apply to all applicable procurements as well as contract-specific goals regarding the participation of MBEs and WBEs on specific contracts. Such contract-specific goals will be set in consultation with the Administration & Finance Cabinet and the Equity & Inclusion Unit and shall be based upon relevant factors, including the availability of minority- and woman-owned business enterprises by industry type as summarized in Section I and set forth in detail in the disparity study completed February 2021, the type and location of the contract, the relationship of the goals to the relevant market, and other information.

C. City departments shall act in good faith to meet these goals in awarding contracts.

D. Unless earlier revoked or amended, this Executive Order shall be in effect for a period of five years until the beginning of Fiscal Year 2027. The Equity and Inclusion unit, in consultation with the Administration & Finance Cabinet, shall review the program described in this Executive Order within five years. The review shall determine: whether the objectives are being met; whether the conditions giving rise to the Order continue to exist; and whether the program described in the Order should be modified or sunsetted. As part of this review and any

extension of the program, the City shall conduct a new disparity study and other necessary investigation.

III. SUPPLIER DIVERSITY PLAN

The Equity and Inclusion Unit, in cooperation with the Administration & Finance Cabinet, shall develop a Supplier Diversity Plan consistent with this Executive Order to provide City employees with the necessary guidance and processes to support procurement consistent with the City's goals. This Supplier Diversity Plan shall be revised at least every five years and more often as needed, including updating application of adjustment factors to the City's overall aspirational goals. The Supplier Diversity Plan may include any policy, procedure, or guidance that the Equity and Inclusion Unit and the Administration & Finance Cabinet deem appropriate for meeting the City's goals, but shall address the following areas and policies:

- A. *General Solicitation and Contract Requirements (This portion of the Plan to be created and implemented by FY 2022).* The Plan should address general contracting policies and procedures to apply to all City contracts in order to support the equal access of all businesses including minority- and woman-owned business enterprises and shall include, among other things: race-, ethnic- and gender-neutral measures and efforts to increase participation of small businesses, including minority- and woman-owned business enterprises; inclusion of the City's aspirational goals in all contracts; requiring that all procurements require respondents to provide a breakdown of all firms to be employed as prime contractors and subcontractors, the total amount committed to each firm, and whether each is a certified minority- or woman-owned business enterprise; a process ensuring that departments solicit quotes from certified MBEs and WBEs for procurements between \$10,000 and \$50,000; and consideration of payment processes.

- B. *Contract-Specific Goals (This portion of the Plan to be created and implemented within six months).* The Plan shall lay out the process for determining whether good-faith contract-specific MBE or WBE participation goals or evaluation criteria are appropriate for a particular contract, setting such goals on applicable contracts, evaluating compliance with such goals, and monitoring compliance with such goals. In laying out such process, the Plan shall:
 - a. Identify the group or groups of City employees who will be responsible for selecting specific contracts and setting specific goals for such contracts;
 - b. Provide that when determining whether a contract will include contract-specific goals and when setting the goals for the contract, the City will consider, among

other factors, whether the project is likely to include subcontractors, the nature and location of work, the availability of MBEs and WBEs for the specific location and types of work involved, and other measures taken on the contract;

- c. Include provisions to measure or evaluate good-faith efforts to achieve any such contract-specific goals, including requiring respondents to affirmatively state that they will exercise good-faith efforts to meet the applicable contract-specific contracting goals;
- d. Provide that City departments shall use a respondent's actual compliance and demonstrated good-faith efforts to comply when assessing any qualification or evaluative criterion established in a contract; and
- e. Incorporate a respondent's demonstrated good-faith efforts to comply with any contract-specific goals into the qualifications to respond to a construction contract where contract-specific goals are established.

C. *Vendor Inclusion and Outreach (This portion of the Plan to be created and implemented by FY 2022).* The Plan will create policies and procedures through which City departments will actively inform and educate MBEs and WBEs that could potentially do business with the City about City procurement processes and upcoming opportunities. The Plan should include, among other aspects: requiring bidders on certain City contracts to provide an M/WBE Inclusion Plan, when applicable, in order to sustain and improve participation of M/WBEs in City contracts; requiring City departments to attend outreach events for existing and potential M/WBE firms; in coordination with the Equity and Inclusion unit, providing training and assistance to small businesses, including M/WBE firms, about successfully bidding, administering and performing City contracts; and referring eligible businesses to the Equity and Inclusion unit to pursue business certification as an MBE or WBE.

IV. SUPPLIER DIVERSITY PROGRAM

The Equity and Inclusion Unit in the Mayor's Office of Economic Development shall establish a narrowly tailored Supplier Diversity Program to implement this Executive Order and Supplier Diversity Plan. The Unit shall work with the Administration and Finance Cabinet, Procurement Department, the City Auditor, the Budget Office, and other departments and offices to ensure all policies, practices and processes are consistent and complementary with full participation for M/WBE firms in pursuing City contracts. Such policies shall include necessary forms and training for departments to comply with the program, providing departments with

regular reports of their MBE and WBE utilization, and processes for measuring and monitoring contractor compliance with their obligations under the program.

The Unit, through its Supplier Diversity Program, will also work to improve and expand technical assistance, business development, training and mentoring programs for small businesses, including M/WBE firms by greater coordination with organizations, businesses, individuals and public agencies as well as other City departments and offices. The Supplier Diversity Program, in collaboration with the Administration and Finance cabinet and the Department of Innovation and Technology, shall develop an online dashboard to report publicly on the City's discretionary spending and utilization of MBEs and WBEs.

VI. DEFINITIONS

A. Minority Business Enterprise (MBE): A business that is at least 51% owned and controlled by one or more minority persons, such that it is eligible for certification by the Equity and Inclusion Unit as a Minority Business Enterprise.

B. Woman Business Enterprise (WBE): A business that is at least 51% owned and controlled by one or more women, such that it is eligible for certification by the Equity and Inclusion Unit as a Woman Business Enterprise.

C. Utilization: Refers to the percentage of contract and procurement dollars that the City spends or spent with minority- and/or woman-owned businesses.

D. Availability: Refers to the percentage of contract and procurement dollars that minority- and/or woman-owned businesses are expected to be available to perform based on specific types and sizes of City prime contracts and subcontracts.

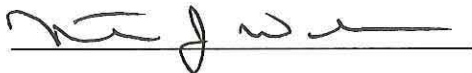
VII. TRACKING AND REPORTING

A. As part of the annual budget process, beginning with the first budget after the establishment of the goals laid out in Section II, the Office of Budget Management shall require each department that engages in procurement to submit a written report that summarizes its procurement activity for the prior fiscal year, whether it met the aspirational annual goals laid out in Section II, and how it plans to meet said goals going forward. This shall be in addition to the required Equitable Procurement Plan, and shall be developed and reviewed by staff from the Office of Budget Management, the Equity and Inclusion Unit, and the department.

B. The Equity and Inclusion Unit shall develop, establish, and track metrics to measure the overall development and implementation of this Order. The Equity and Inclusion Unit will report on established metrics on a quarterly basis.

VIII. SEVERABILITY

The provisions of this Order are severable and if any provision, or portion thereof, should be held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the remaining provisions that shall remain in full force and effect.



Martin J. Walsh
Mayor of Boston

2-18-21

Dated: