

EXECUTIVE ORDER No. 71

September 9, 2005

ENHANCING CITY CONTRACTING OPPORTUNITIES FOR MINORITY- AND
WOMEN-OWNED BUSINESSES AND OTHER SMALL BUSINESSES

WHEREAS, the City of New York has a diverse business community that encompasses thousands of small businesses which generate substantial economic activity and provide numerous employment opportunities throughout the City; and

WHEREAS, the City's economic development and vitality are inextricably linked to the continued growth and success of small and emerging businesses; and

WHEREAS, many small businesses are disadvantaged in the market because of the owners' race or gender, or other factors in the owners' social and economic background; and

WHEREAS, the agencies of the City of New York enter into several billion dollars' worth of contracts each year to obtain construction, construction-related services and other goods and services needed by the agencies for the exercise of their powers, duties and responsibilities; and

WHEREAS, recent analysis documents statistically significant underutilization of minority- and women-owned businesses (collectively "M/WBEs") as City vendors, relative to their availability in the relevant market area and capacity to supply the City's needs; and

WHEREAS, the City must now take remedial steps to overcome factors that have operated to exclude, inhibit or disadvantage M/WBEs and similarly situated businesses pursuing opportunities to do business with the City; and

WHEREAS, the Charter provides that the Commissioner of Small Business Services ("SBS Commissioner") shall, "[e]xcept as otherwise provided by law, ... have charge and control of and be responsible for all functions and operations of the city relating to business and economic development, [and] the enhancement of economic development and financial opportunity for minority and women owned business enterprises," and authorizes the SBS Commissioner "to establish business, industrial and

commercial policies, programs and projects which affect the business, industrial, commercial or economic well-being, development, growth and expansion of the economic life of the city;... to study, organize, promote, coordinate and carry out within or without the city, activities, projects and programs designed to encourage, stimulate and foster the well-being, development, growth and expansion of business, industry and commerce in the city, and the enhancement and protection of the economic life of the city; ... to promote and encourage the location and development of new business and industry in the city, as well as the maintenance and expansion of existing business and industry, and for this purpose to cooperate with public and private agencies, organizations and individuals; [and] to maintain, operate and control such programs as may be necessary or required to achieve the objectives of the department [of small business services];” and

WHEREAS, the Charter provides for a Division of Economic and Financial Opportunity within the Department of Small Business Services (“DSBS”), the purpose of which is “to enhance the ability of minority and women owned business enterprises to compete for City contracts, to enhance city agencies’ awareness of such business enterprises, and to ensure their meaningful participation in the city procurement process;” and

WHEREAS, the Charter authorizes the SBS Commissioner to promulgate rules for these purposes;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Program established. DSBS, in conjunction with the Mayor’s Office of Contract Services (“MOCS”), and in consultation with the Procurement Policy Board, shall promptly establish a program to enhance meaningful participation of M/WBEs as prime contractors and subcontractors in City contracts. The program shall be governed by this order and rules that shall be promulgated by the SBS Commissioner. Such rules shall include, but not be limited to, provisions to:

- (a) establish criteria for certifying eligible businesses as M/WBEs;
- (b) implement a certification process that is not unduly burdensome to the eligible businesses and that recognizes, to the maximum extent feasible, the certification rosters maintained by other governmental entities operating within the City’s market area;
- (c) maintain an ongoing directory of certified M/WBEs that shall be used by all City agencies; and
- (d) establish standards and procedures which City agencies shall use in promulgating annual procurement opportunity plans, incorporating M/WBE participation goals for categories of their procurements, including but not

limited to prime contractor and subcontractor participation goals for construction and construction-related services contracts and subcontracts at or below one million dollars in value.

Such rules may also include provisions aimed at increasing opportunities for small businesses whose owners have experienced social and economic disadvantage.

§ 2. Steering Committee. Prior to drafting such rules, the SBS Commissioner and MOCS Director shall co-chair a steering committee consisting of the Director of the Office of Operations, the Corporation Counsel and the Commissioners of the Department of Design and Construction, Department of Transportation, Department of Housing Preservation and Development, Human Resources Administration, Department of Environmental Protection, Department of Citywide Administrative Services, Department of Sanitation, Department of Parks and Recreation, Department of Information Technology and Telecommunications, Administration for Children's Services, Department of Homeless Services, and the Department of Health and Mental Hygiene. The committee shall:

- (a) seek guidance from various stakeholders, including principals of M/WBEs and other small businesses who are City contractors or subcontractors and principals of such businesses who have been unsuccessful in bidding for City contracts, in executing subdivisions (b) through (d) of this section;
- (b) review and recommend program objectives and options for achieving such objectives both through race and gender neutral and race and gender conscious measures;
- (c) review the proposals of the Mayor's Commission on Construction Opportunity and recommend their incorporation into the rulemaking as appropriate; and
- (d) recommend a process for ongoing monitoring and reporting of outcomes.

§ 3. Department of Small Business Services. In fulfilling the objectives of this program, the SBS Commissioner shall:

- (a) design strategies, in a manner consistent with Section 2 of this Order, to give opportunities to such businesses to participate as contractors and subcontractors in appropriate contracts of the Department of Education, New York City Housing Authority, Health and Hospitals Corporation, School Construction Authority, and the Economic Development Corporation. The head of each such entity shall cooperate with the SBS Commissioner in providing detailed data and other assistance in the design of such strategies in light of agency-specific procurement processes, and shall identify any

impediments to such data collection and tracking, so that they can be addressed;

- (b) enhance existing programs and implement new programs, and market them appropriately, to expand potential for both public and private sector contracting opportunities for such businesses, including providing classes in the contractor certification process as well as in capacity building, business development, and mentoring programs, some of which may also be offered by the private sector;
- (c) provide technical assistance for such businesses to enable them to obtain contracts from the New York State Office of General Services (OGS), thereby providing such businesses access to purchasing opportunities that City agencies make from OGS contracts;
- (d) expand the scope and accessibility of existing directories of such businesses to enable buyers in both the public and private sectors to identify and solicit them for contracting opportunities;
- (e) enhance notification of bidding opportunities for such businesses through the City's bid-matching system, Softshare, as well as other channels;
- (f) enhance the process of debriefing unsuccessful bidders; and
- (g) maintain and consult with an M/WBE Advisory Board comprised of local businesses and trade group partners.

§ 4. Mayor's Office of Contract Services.

(a) In fulfilling the objectives of the program with respect to M/WBEs, the MOCS Director is hereby authorized to:

- (1) review all solicitations, other than invitations for competitive sealed bids, prior to agencies' issuance thereof, to ensure that any requirements relating to potential vendors' experience and qualifications are reasonably related to the purpose of the procurement and will not unduly restrict the opportunities of such businesses to compete for such procurement;
- (2) direct agencies to set the threshold for the requirement of payment and/or performance bonds by vendors at a level commensurate with the City's interest both in appropriate allocation of risks and in building the capacity of small businesses to contribute to the City's economic growth;

(3) establish citywide protocols for the collection of all procurement-related information necessary to monitor Mayoral agencies' performance of their obligations under this Executive Order, and in consultation with the Commissioners of Information Technology and Telecommunications and Citywide Administrative Services and the Director of the Office of Management and Budget, ensure that the City's financial and procurement tracking systems are enhanced as soon as practicable, so that Mayoral agencies have the capacity for automated tracking of bid/proposal pick-up and response rates and the approvals of subcontractors, as well as to permit vendors to enroll and submit procurement-related documentation to the City on-line;

(4) establish policies and procedures to facilitate agencies' use of their micropurchase authority to promote access by minority- and women-owned businesses and small businesses to City procurement opportunities, including but not limited to the expansion of the City's procurement card program to include all Mayoral agencies, thereby facilitating such agencies' efficient purchase of goods, services, construction and construction-related services;

(5) review the curriculum of the City's Procurement Training Institute to recommend courses that should be added or modified, to ensure appropriate training for agency procurement staff in policy and procedures that promote access by such businesses to City procurement opportunities;

(6) audit agency compliance with the provisions of this Executive Order and with any rules promulgated thereunder on an ongoing basis, and consider the results of such audits in determining the level of procurement authority to be delegated to the ACCO of each Mayoral agency, pursuant to Section 4 of Executive Order 48 of 2004;

(b) By no later than March 1, 2006, and biannually thereafter, the MOCS Director shall issue report(s) analyzing the following areas of City procurement and making recommendations to enhance opportunities for such businesses, including recommendations for proposed rules to be presented for adoption by the Procurement Policy Board, as appropriate:

(1) small purchases of goods, services, construction and construction-related services pursuant to Charter § 314;

(2) requirements contracts, task order contracts and other procurements wherein agencies have bundled or grouped procurements of multiple goods, services, construction or construction-related services in large-scale solicitations;

(3) bid protest and contract dispute resolution procedures; and

(4) payment procedures in connection with contracts for construction and construction-related services, including but not limited to, payment of mobilization costs, retainage at the conclusion of contracts, direct payments to subcontractors and prompt payment of invoices;

(c) The MOCS Director shall consult with the SBS Commissioner as he or she deems appropriate in the implementation of the provisions of this section.

§ 5. Agency heads. Each agency head shall be responsible for implementing an annual agency procurement opportunity plan, tracking agency performance under such plan, and otherwise cooperating with the SBS Commissioner and the MOCS Director in accordance with this order.

§ 6. This executive order shall take effect immediately.

Michael R. Bloomberg
Mayor