

EXECUTIVE ORDER 85-2

WHEREAS the practice of racial, ethnic and sexual discrimination was, in the recent history of the United States, authorized and, in some instances, mandated by law; and

WHEREAS such practice is repugnant to the principles of liberty and equality embodied in the Constitution of the United States and the Constitution of the State of Illinois; and

WHEREAS legal prohibitions against such practice have eradicated neither discriminatory practices nor their effects; and

WHEREAS past discriminatory practices have placed women and racial and ethnic minorities in a position of social and economic disadvantage which has resulted in, among other things, reduced opportunity for them to form and control businesses and in lack of opportunities for businesses owned and controlled by them; and

WHEREAS there exists a statistically significant disparity between the minority and female populations of the City of Chicago and both the number of minority-owned and women-owned businesses in the City and the number of such businesses being awarded City contracts; and

WHEREAS these disparities reflect the long standing social and economic barriers impairing women and minorities and not their respective capabilities or eagerness to form and manage businesses; and

WHEREAS the lack of economic opportunities for women-owned and minority-owned businesses unnecessarily impedes both social progress and the economic development of the City of Chicago; and

WHEREAS most minority-owned businesses are located in centers of minority population, and the lack of economic opportunities for such businesses contributes to unemployment in such communities; and

WHEREAS the Municipal Purchasing Act, as amended, requires in most instances that the City's Purchasing Agent award to the lowest "responsible bidder," and the Illinois Supreme Court has interpreted said Act as allowing a bidder's responsibility to be measured in part by his commitment to equal opportunity and affirmative action; and

WHEREAS the City of Chicago is listed as a Labor Surplus Area by the United States Department of Labor; and

WHEREAS small businesses constitute a large segment of the business community, in number of businesses, gross receipts and in number of employees, and are responsible for creation of many new employment opportunities; and

WHEREAS the City of Chicago through its contracting function has a significant impact on local economic activity and business development; and

WHEREAS it is in the best interests of the City of Chicago, its labor force, business community and taxpayers that the local economy be strengthened; and

WHEREAS the City of Chicago has a compelling interest in promoting a sense of economic equality among its citizens and its contractors;

NOW THEREFORE, I, HAROLD WASHINGTON, Mayor of the City of Chicago in the State of Illinois, do hereby ORDER:

1. As used in this Order, the following terms shall have the following meanings:

(a) "Minority group" means any of the following racial or ethnic groups, as defined by the United States Equal Employment Opportunity Commission: blacks; hispanics, regardless of race; Asian-Americans and Pacific Islanders; American Indian and Alaskan Native.

(b) "Minority-owned business" or "MBE" means a business entity which is at least 51% owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51% of the stock of which is owned by one or more members of one or more minority groups; and whose management and daily business operations are controlled by one or more such individuals.

(c) "Women-owned business" or "WBE" means a business which is at least 51% owned by one or more women, or, in the case of a publicly held corporation, 51% of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(d) "Small business" means a business employing fewer than 100 employees, and which is neither dominant in its field nor the parent, affiliate or subsidiary of a business dominant in its field.

(e) "Local business" means a business located within the corporate limits of the City of Chicago, and which has the majority of its regular, full-time work force located within the City.

(f) "Contract" means any contract, purchase order, or agreement (other than a lease or collective bargaining agreement), awarded by the Purchasing Agent or any officer or agency of the City other than the City Council, and whose cost is to be paid from funds belonging to or administered by the City of Chicago, regardless of source.

(g) "Contractor" means any person or business entity that shall enter into a contract with the City, and includes all partners and all joint venturers of such person.

(h) "Purchasing Agent" means the Purchasing Agent of the City of Chicago.

2. The Purchasing Agent shall establish a goal of awarding not less than 25% of the annual dollar value of all City contracts to qualified MBEs and 5% of the annual dollar value of all City contracts to qualified WBEs.

3. In order to achieve the goal stated in Section 2 of this Order, the Purchasing Agent shall undertake the following measures:

(a) Insert within specifications for each contract for construction of any building, bridge, roadway or other structure a requirement that a bidder commit to the expenditure of 25% of the dollar value of the contract (including any modifications) with one or more MBEs and 5% of the dollar value with one or more

WBEs. This commitment may be met by the bidder's status as MBE or WBE, or by joint venture with one or more MBEs or WBEs, or by subcontracting of a portion of the work to one or more MBEs or WBEs, or by purchase of materials for the work from one or more MBEs or WBEs, or by any combination of the foregoing.

(b) Insert within specifications for all other contracts awarded by competitive bidding a requirement that a bidder commit to expenditure of 25% of the dollar value of the contract (including any modifications thereof) with one or more MBEs and 5% of the dollar value with one or more WBEs. This commitment may be met by the bidder's status as MBE or WBE, or by joint venture with one or more qualified MBEs or WBEs as prime contractor, or by subcontracting of a portion of the work to one or more MBEs or WBEs, or by purchase of materials from one or more MBEs or WBEs, or by any combination of the foregoing.

(c) Consider the extent of each bidder's commitment to MBE/WBE participation as further evidence of the responsibility of the bidder.

(d) Negotiate with any contractor whose contract is not awarded by competitive bidding a commitment to MBE participation of at least 25% and WBE participation of at least 5% of the dollar value of the contract (including any modifications).

(e) Insert in each contract containing a commitment to MBE or WBE participation:

(i) a requirement of periodic reporting by the contractor to the Purchasing Agent on all expenditures made to achieve compliance with the foregoing provision. Such reports shall include the name and business address of each MBE and WBE involved in the contract, a description of the work performed and/or

product or service supplied by each such MBE or WBE, the date and amount of each expenditure, and such other information as may assist the Purchasing Agent in determining the contractor's compliance with the foregoing provision and the status of any MBE or WBE performing any portion of the contract.

(ii) uniform provisions for liquidated damages for a contractor's non-compliance with the commitment to MBE/WBE participation, to be measured by the extent of the contractor's non-compliance.

(iii) uniform provisions for the termination of the contract upon the disqualification of the contractor as MBE or WBE, if (a) the contractor's status as MBE or WBE was a factor in the award of the contract and (b) such status was misrepresented by the contractor.

(iv) uniform provisions for the termination of the contract upon the disqualification of any MBE or WBE subcontractor or supplier of goods or services if (a) the subcontractor's or supplier's status as MBE or WBE was a factor in the award of the contract and (b) the status of the subcontractor or supplier was misrepresented by the contractor. In the event that the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and, if possible, identify a qualified MBE or WBE as its replacement.

(v) uniform provisions allowing the Contract Compliance Officer access to the contractor's books and records, including without limitation payroll records, tax returns and records, and books of account, on 48 hours notice, to allow the Officer to determine the contractor's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.

(f) To the extent practicable, the Purchasing Agent shall award contracts requiring the expenditure of funds not exceeding \$10,000 to qualified MBEs, WBEs, small businesses and local businesses.

(g) Include MBEs, WBEs, small businesses and local businesses on solicitation mailing lists, and assure that they are solicited for suitable contracts.

(h) Prepare quarterly estimates of standard contract needs, by type of contract and approximate volume and dollar value, in order to enhance the participation of qualified MBEs, WBEs, small businesses and local businesses.

(i) Issue rules and regulations to implement the procedures designed by the Contract Compliance Officer appointed pursuant to Section 5 hereof.

4. If, in the course of preparing specifications for a contract, the Purchasing Agent determines that it is impossible to obtain qualified MBEs or WBEs to perform sufficient work to fulfill the commitment stated in Section 3 hereof, or that it is impossible to obtain qualified MBEs or WBEs to perform any of the work or supply any product or service required under the contract, the Purchasing Agent may reduce or waive the commitment to MBE/WBE participation in the contract, as may be appropriate.

5. A Contract Compliance Officer shall be appointed within the staff of the Mayor. The Contract Compliance Officer shall perform the following duties:

(a) Supervise the implementation of this Order and report to the Mayor on a quarterly basis the extent of achievement of the goal stated in Section 2 of this Order, along with any recommendations for modification of the goal or of the measures contained herein.

(b) Establish uniform procedures to apply for certification as MBE or WBE, and to appeal from denial of certification as MBE or WBE. Each application for certification shall be in writing, and executed under oath by an officer or owner of the applicant, and shall contain such information as may assist the Contract Compliance Officer in determining the status of the applicant. Initial certification of any entity as MBE or WBE, or denial of such certification, shall be completed no later than 60 days after receipt of bid or proposal for a contract or subcontract contemplating the applicant's participation as MBE or WBE.

(c) Recruit MBEs and WBEs to apply for certification. Recruitment may be done through contact with other governments, governmental agencies, community organizations, business associations, advertising or any other suitable means.

(d) Maintain a directory of certified MBEs and WBEs, describing them by name, business address, classification and type of business. This directory shall be made available to any interested person during normal business hours.

(e) Direct certified MBEs and WBEs to notify him/her of any change in ownership, officers or management within 10 days after such change occurs.

(f) Investigate the status of certified MBEs and WBEs to determine whether they should retain certification. An investigation of the status of all currently certified MBEs and WBEs shall be undertaken immediately after the effective date of this Order, with priority given to investigation of previously

certified firms to which contracts or subcontracts are awarded after the effective date hereof.

(g) Establish uniform procedures, consistent with the principles of due process of law, for the decertification of MBES and WBEs which have been improperly certified or no longer qualify for certification, and for appeal from decertification.

(h) Notify the Purchasing Agent and all governments and governmental agencies which request information on certified MBES and WBEs of any decertifications made in accordance with subsection (g) of this Section.


(i) Publicize through all appropriate means the program established in this Order, in order to attract qualified MBES, WBEs, small businesses and local businesses.

6. The head of any executive department or agency of City government, who exercises any contracting power in behalf of the City beyond the scope of the Purchasing Act, shall consult and cooperate with the Purchasing Agent and the Contract Compliance Officer in achieving the goal stated in Section 3 of this Order through his or her exercise of the contracting power and shall, to the extent possible, implement procedures described in subsections (a) through (e) of Section 3. Each such department or agency head shall report all negotiations and contracts to the Contract Compliance Officer, who shall enforce the commitment to MBE/WBE participation contained therein.

7. This Order shall not apply to any contract to the extent that it is inconsistent with procedures or standards required by any law or regulation of the United States or the State of

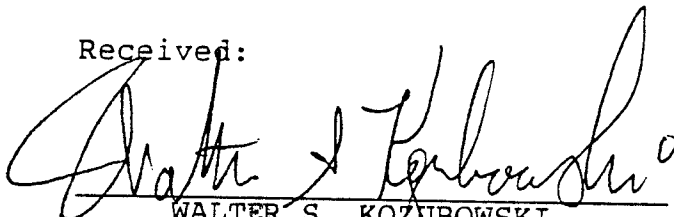
Illinois or by any ordinance of the City of Chicago.

8. This Order shall take effect upon its filing in the office of the City Clerk.


HAROLD WASHINGTON
Mayor of the City of Chicago

Dated: April 3, 1985

Received:


WALTER S. KOZUBOWSKI
City Clerk