

**EXECUTIVE ORDER
OF
MAYOR MARTIN J. WALSH**

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BOSTON, MA

An Executive Order in Support of Equitable Procurement Procedures

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 certain businesses, including small and local businesses, minority-owned businesses, woman-owned business, and veteran-owned business; and

WHEREAS, the entire City of Boston benefits from a fair and equitable environment where income inequality is proactively addressed; and

WHEREAS, a healthy small and local business sector, including minority, woman, and veteran-owned businesses is in the best interests of the City, and in reducing economic inequalities as manifested in lower unemployment, the building of wealth in economically-distressed areas of Boston, and in the overall enhancement of market opportunities for all businesses in the City and region, and

WHEREAS, the City is currently conducting a disparity study to analyze whether there are racial, ethnic, and gender disparities or barriers in City procurement; and

WHEREAS, the City will use the findings of the study to inform its policymaking regarding redressing any identified historical disparities in City procurement; and

WHEREAS, independent of the results of the disparity study, the City recognizes its responsibility to ensure that it utilizes modern, competitive procurement practices that do not unintentionally favor incumbents or inadvertently retain historical barriers to the full participation of all business enterprises, particularly small and local businesses, minority-owned businesses, woman-owned businesses, and veteran-owned businesses; and

WHEREAS, City of Boston Code, Chapter IV, Section 4.4, requires the Equity and Inclusion Unit of the Office of Economic Development ("the Equity and Inclusion Unit"), as the City office charged with implementing diversity initiatives within City procurement, to implement a supplier diversity program, affirmative marketing policy, and request for proposals policy; and

WHEREAS, further training and procedural clarification is necessary and useful to the Equity and Inclusion Unit and City departments in carrying out their obligations under said Ordinance; and

WHEREAS, further training and procedural clarification can also efficiently support the goals and implementation of the Executive Order concerning veteran-owned small business development dated March 16, 2015; and

WHEREAS, the City has modernized, and continues to modernize, its procurement systems in recent years, including the creation of an online system for soliciting and receiving quotes, bids, and proposals for City contracts, and the City should ensure that its solicitation practices are modernized to take advantage of these new tools;

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. POLICY

Every City department and office shall follow the procedures set forth in this Executive Order when procuring goods, services, and other work where there is an obligation or opportunity under the law to publicly procure. These procedures supplement procedures required by Massachusetts procurement statutes, the City Charter, and City of Boston ordinances. No individual business is guaranteed a City contract or any other rights under this policy. This policy is intended to ensure that City departments have the tools and training to engage in modern procurement practices that avoid procedural barriers to the participation of any business, including small and local businesses, minority-owned businesses, woman-owned businesses, and veteran-owned small businesses.

II. DIRECTORY MODERNIZATION

A. By March 31, 2020, the Administration and Finance Cabinet will work with the Department of Innovation and Technology and the Office of Economic Development and will jointly complete a project to create or modernize an electronic directory (“the Directory”) of all businesses that are certified by the Equity and Inclusion Unit in any of the categories of business for which it maintains certification programs. The Directory shall include current data regarding certified businesses, shall be accessible to all City employees who participate in procurement or the making of contracts, and shall be able to be sorted or searched by the type of work performed by each certified business.

1. Currently, the categories of businesses certified by the Equity and Inclusion Unit are: Small Business Enterprise; Small Local Business Enterprise; Minority Business Enterprise; Woman Business Enterprise; Veteran-Owned Small Business Enterprise; and Service-Disabled Veteran-Owned Small Business Enterprise. The Equity and Inclusion Unit shall retain the authority to determine whether or not to maintain a certification program for any specific category, or to create such a programs for any other category, and any

such changes in the categories of certification maintained by the Equity and Inclusion Unit shall be reflected in the Directory. The Directory may also include businesses that are certified by the Commonwealth of Massachusetts in categories that the Equity and Inclusion Unit determines are analogous to its certification programs.

III. TRAINING

- A. By March 31, 2020, all relevant departments as requested by the Chief Procurement Officer shall cooperate to complete a project to update a uniform City procurement training presentation and accompanying materials. The training and materials shall address: standard city procurement and contract formation requirements; best practices for transparent, modern, competitive procurements; resources available to City staff to research and locate potential vendors; and implementation of the procedures set forth in this Executive Order, specifically including how to complete the Equitable Procurement Certification Form and any other procedures useful for administering this Executive Order.
- B. By May 31, 2020, the Administration and Finance Cabinet, with the assistance of any department requested by the Chief Procurement Officer, shall conduct mandatory trainings for procurement staff from each City department pursuant to the updated, uniform City procurement training presentation.

IV. PROCEDURES

A. **Consultation with the Equity and Inclusion Unit**

- 1. *Annual Planning as Part of the Budget Process.* As part of the annual budget process, beginning with the Fiscal Year 2021 process, the Office of Budget Management shall require each department that engages in procurement to submit a written Equitable Procurement Plan that will include specific discussion of strategies, procedures, and resources for conducting equitable and competitive procurement. The Equitable Procurement Plan will be developed and reviewed by staff from the Office of Budget Management, the Equity and Inclusion Unit, and the department, and will allow consideration, in the specific context of each department's work, of opportunities to develop and utilize procurement techniques that will increase competition by promoting access to opportunities to certification-eligible businesses, including Small Local Business Enterprises, Minority Business Enterprises, Woman Business Enterprises, and Veteran-Owned Small Business Enterprises.

2. *Development of the Equitable Procurement Plan.* The Office of Budget Management and the Equity and Inclusion Unit will engage annually with each department as follows:
 - a. The department will create a draft Equitable Procurement Plan that outlines the range of procurements the department anticipates making in the coming year;
 - b. The Office of Budget Management, the Equity and Inclusion Unit and the submitting department shall meet to review some or all of the department's procurements from the prior year in order to consider the department's experience and lessons learned from operating under this Executive Order;
 - c. At the meeting, staff will address overall strategy for ensuring that the department's procurements are available to all relevant businesses without ignoring or disadvantaging Small Local Business Enterprises, Minority Business Enterprises, Woman Business Enterprises, and Veteran-Owned Small Business Enterprises;
 - d. Staff will consider anticipated procurements for the upcoming year and consider the procurement methods and techniques, including solicitation strategy, that can be utilized for procurements to support the City's efforts to make contracting opportunities equitably and competitively available to a wide range of vendors. Staff shall specifically discuss anticipated procurements that are exempt from Massachusetts procurement laws and what, if any, solicitation process is appropriate;
 - e. Staff will document agreed-upon overall and procurement-specific solicitation strategies, and agreed-upon procurement types in a Procurement Plan that is agreed upon by representatives of the three departments and which shall be submitted to the Office of Budget Management as part of the annual budget process.
3. *Ongoing Consultation.* Departments and the Equity and Inclusion Unit shall be available to confer with each other on an ongoing basis to consider procurements that were not anticipated or discussed at an annual planning meeting. The Equity and Inclusion Unit will also be available to departments on an ongoing basis to provide assistance using the Directory, and to provide guidance on soliciting quotes and responses from businesses.

B. Solicitation and Routing for Approvals (Effective July 1, 2020)

1. Procurements under \$10,000

- a. Departments shall award each procurement by engaging in sound business practices. Sound business practices shall include consulting the Directory to identify possible vendors each time a department considers engaging a vendor for work valued at less than \$10,000. Sound business practices shall also include the periodic solicitation of price lists or quotes to keep informed of market standards to ensure receipt of reasonable pricing. Such periodic solicitation shall seek at least one quote from a business that appears in the Directory that customarily performs or supplies the relevant work. (Departments may solicit quotes from more than one business appearing on the Directory.) The Department shall keep a written record to document the efforts taken to meet sound business practices as set forth under this paragraph.

2. Procurements between \$10,000 and \$50,000

- a. Departments must solicit at least three (3) written quotes (or responses) from businesses that customarily perform or supply the relevant work, supplies or services.
- b. Subject to the following paragraph (c), departments shall solicit at least one written quote from a business listed on the Directory. When practical, Departments are encouraged to solicit quotes from more than one business appearing in the Directory.
- c. If a department searches the Directory but is unable to identify at least one qualified business on the Directory from which to solicit a quote (or response), the department may only complete its solicitations and proceed to route the procurement for City approval after it takes the following steps:
 - i. The department, using a process established by the Administration and Finance Cabinet, notifies the Equity and Inclusion Unit that it conducted a search but did not identify a business to solicit on the Directory;

- ii. Within five (5) business days, the Equity Inclusion Unit may provide recommendations, if any, for Directory-eligible businesses that the department can solicit;
- iii. If the Equity and Inclusion Unit provides recommendations, the department shall solicit a quote from at least one vendor from that set of recommendations before proceeding with the procurement.

3. *Procurements over \$50,000*

- a. Departments must solicit bids, proposals, or responses as permitted by Massachusetts procurement law. Where Massachusetts law permits more than one procurement method, the department shall utilize any process specifically addressed and agreed upon at the annual planning meeting. If a particular procurement strategy, method or technique was not contemplated or addressed at the department's annual planning meeting, the department may confer with the Equity and Inclusion Unit in selecting the procurement method or technique for that procurement.
- b. Where a department utilizes a Request for Proposals, it shall include criteria to assess each proposer's commitment and approach to furthering the City's objectives of ensuring that its procurements and associated work are fully open to the inclusion of small and local businesses, including Small Local Business Enterprises, Minority Businesses Enterprises, Woman Business Enterprises, and Veteran-Owned Small Business Enterprises.
- c. In addition to complying with all required advertising procedures and any other outreach a department elects to conduct, a department shall search the Directory for businesses that perform the type of work relevant to the solicitation, and shall directly notify all such businesses listed in the Directory of the opportunity to bid or respond within three (3) days of the advertisement appearing in the City Record. The department shall conduct this search at least five (5) business days prior to the solicitation being advertised in the City Record. Where practical, departments will utilize the City's online system to provide this notification to each such business, but in all cases the notification shall include the electronic address where a business can locate the advertised solicitation.
- d. If a department searches the Directory and does not identify any businesses from the Directory to notify, the department, using a process established by the Administration and Finance Cabinet, shall

notify the Equity and Inclusion Unit that it conducted a search but did not identify any businesses on the Directory at least five (5) business days before the solicitation is advertised in the City Record. Within five (5) business days, the Equity and Inclusion Unit may provide recommendations for relevant Directory-eligible businesses to directly notify. If the Equity and Inclusion Unit provides recommendations, the department shall directly notify each recommended vendor of the opportunity to bid or respond within three (3) days of the advertisement appearing in the City Record, and the notification shall include the electronic address where a business can locate the advertised solicitation.

4. *Procurement Exempt from Massachusetts Solicitation Requirements*

- a. When a particular procurement is exempt from Massachusetts solicitation requirements or requires only a limited solicitation for purchase (such as but not limited to, statutory exemptions, cooperative purchasing, sole source contracts, and purchases from statewide contracts), departments are subject to the requirements under this Executive Order, to the extent applicable, unless:
 - i. The department and Equity and Inclusion Unit agree to the use of such non-solicitation procurement method for that purchase or type of purchase at the annual planning meeting; or
 - ii. The department submits a request to the Equity and Inclusion Unit to procure without a public solicitation, with reasons for the request, and receives written agreement to proceed without public solicitation, or receives no response from the Equity and Inclusion Unit within five (5) business days.

5. Each procurement routed for execution shall include a completed Equitable Procurement Certification Form to demonstrate compliance with all applicable procedures required by this Executive Order.

- a. The Administration and Finance Cabinet will oversee the creation of a process that will allow departmental staff to create an Equitable Procurement Certification Form for each procurement that will make data from the Form available to the Equity and Inclusion Unit for review and analysis.

C. Vendor Certification

Subject to the creation of a contract process by the Administration and Finance Cabinet, each vendor that is awarded a procurement from the City shall be asked, as part of that contract, to provide information about the business entity that is sufficient to allow

the Equity and Inclusion Unit to determine whether the business may be eligible for certification in any of its certification categories.

V. TRACKING AND REPORTING

The Equity and Inclusion Unit shall develop, establish and track metrics to measure the overall development and implementation of this Order and to inform the discussion and planning at the annual planning meetings described under Section IV(A)(1). The Equity and Inclusion Unit will report on established metrics on at least an annual basis.

VI. ADMINISTRATIVE PROCEDURES

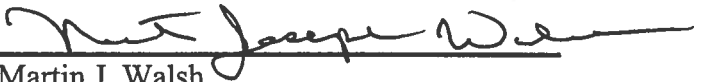
The Administrative and Finance Cabinet shall have the authority to create additional policies, procedures, training materials, and contract forms necessary or useful to implementing this Executive Order.

VII. DEFINITIONS

- a. Directory: The City's database as created, maintained and updated by the Equity and Inclusion Unit that lists all businesses certified by the Equity and Inclusion Unit. In its discretion, the Equity and Inclusion Unit may designate as part of the Directory, for any duration it specifies, any list maintained by the Commonwealth of Massachusetts of businesses certified in categories analogous to certifications maintained by the City.
- b. Equitable Procurement Certification Form: a form required by Section IV(B)(5) of this Executive Order to be part of all City of Boston procurements, on which departments document compliance with the procedures set forth in this Executive Order, and which may be used by departments to request recommendations from the Equity and Inclusion Unit.
- c. Minority Business Enterprise (MBE): A business that is at least 51% owned and controlled by one or more adult minority persons, such that it is eligible for certification by the Equity and Inclusion Unit as a Minority Business Enterprise.
- d. Small Local Business Enterprise (SLBE): A business which is a small business and whose principal office is physically located in the City of Boston, as defined by the SLBE certification regulations, eligible for certification by the Equity and Inclusion Unit as a Small Local Business Enterprise.
- e. Veteran-Owned Small Business Enterprise (VOSBE): A business that is either a veteran-owned small business or a service-disabled veteran-owned small business certified by the US Department of Veteran Affairs.

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

Signed this 8th day of November, 2019

A handwritten signature in black ink, appearing to read "Martin J. Walsh", written over a horizontal line.

Martin J. Walsh
Mayor of Boston