EXECUTIVE ORDER #28

# EXECUTIVE ORDER

## MINORITY AND WOMEN-OWNED BUSINESS PARTICIPATION ON CITY CONTRACTS

An Executive Order relating to minority and women's business enterprises' participation in City contracts.

**WHEREAS,** the City of St. Louis is particularly concerned that local minority and women's business enterprises be afforded an equal opportunity to participate and be utilized in City-funded contracts; and

**WHEREAS,** there is ample evidence that there has been discrimination against minority and women's business enterprises in the City of St. Louis and the effects of that discrimination are continuing; and

**WHEREAS,** it is the policy of the City of St. Louis to rectify the effects of identified discrimination within its jurisdiction; and

**WHEREAS,** it is the city's goal to fully utilize the skills of minority business enterprises and women's business enterprises in all sectors of the economy so as to best advance the City's economic and business development objectives; and

**WHEREAS,** the City of St. Louis, Missouri, the St. Louis Minority Contractors Association, Inc., and the United States Department of Housing and Urban Development entered into a Consent decree in the United States District Court for the Eastern District of Missouri on or about December 11, 1990 toward the end of establishing a program to enhance the opportunities of minority and women's businesses to participate fully in City-funded public work contracts; and

**WHEREAS,** the Board of Aldermen adopted Ordinance Number 62035, approved July 29, 1990, establishing a review committee to make recommendations to the Board.

## SECTION ONE. DEFINITIONS

For purposes of this policy, the following terms have the meanings indicated:

1. Minority Business Enterprise (MBE): a sole proprietorship, partnership, or corporation owned, operated, and controlled by minority group members who have at least 51% ownership. The minority group member(s) must have day to day operational and managerial control, and an interest in capital and earnings commensurate with his or her percentage of ownership.
2. Minority Group member(s): persons legally residing in the United States who are African-American, Asian-American, Native-American or Hispanic-American.
3. Women's Business Enterprise (WBE): a sole proprietorship, partnership, or corporation owned, operated and controlled by a woman or women who have at least 51% ownership. The woman or women must have day to day operational and managerial control, and an interest in capital and earnings commensurate with her or their percentage of ownership.
4. Certification: The process by which the St. Louis Development Corporation determines a person, firm, or legal entity to be a bona fide minority or women's business enterprise.
5. Contracting Agency: Any Agency or Department making a contract on behalf of the City of St. Louis.

## SECTION TWO. POLICY

It is hereby declared to be the policy of the City of St. Louis that the effects of identified discrimination against minority business enterprises and women's business enterprises within its jurisdiction shall be eradicated as part of the overall City business and economic development strategy. The method that the City shall employ to implement that policy is the establishment of a goal of at least

25% minority business enterprise participation and at least 5% women's business enterprise participation in contracts and purchases wherein City funds are expended. That goal shall be pursued by the programs described below.

## SECTION THREE. PROGRAM ADMINISTRATION

1. SLDC shall be charged with overall responsibility for the administration and enforcement of the City's minority and women's business enterprise participation policy. SLDC will establish procedures for all contacting agencies for the purpose of monitoring the City's overall performance with respect to minority and women's business enterprise participation. The duties and responsibilities of SLDC shall include:

   (a) adopting rules and regulations to effectuate this order;

   (b) developing and distributing a directory of certified MBE's and WBE's;

   (c) providing information and needed assistance to MBE's and WBE's to increase their ability to compete effectively for the award of City contracts;

   (d) investigating alleged violations of this order and making written recommendations for remedial action when appropriate;

   (e) developing and distributing all necessary forms, applications, and documents necessary to comply with implement and effectuate this order;

   (f) reviewing, on a regular basis, the progress of each contracting agency toward achieving the goals for the utilization of minority and women's business enterprises and making an annual report as of June 30 of each year, which report shall be delivered to the Mayor no later than September 30, commencing September 30, 1998, reporting that progress which has been made, together with recommendations as to such further remedial action that should be taken, if any;

(g) making recommendations to appropriate City officials regarding methods to further the policies and goals of this order;

(h) monitoring contractors throughout the duration of the contract to ensure that all efforts are made to comply with the requirements of this order; and

(i) certifying that the requirements of this order have been satisfied before contracts are signed or countersigned.

2. It shall be the responsibility of the contracting agency to ensure that bids or proposals from the agency adhere to the procedures and provisions set forth in this order.

(a) The contracting agency director or designee shall assume primary responsibility for achieving the goals of this program and shall review, on a continuing basis, all aspects of the program's operations to assure that the purpose is being attained;

(b) The contracting agency shall take the following actions to ensure that MBE's and WBE's have maximum opportunity to participate on City contracts for which bids are solicited:

(i) the advertisements for bids, if any, shall appear in the City Journal no less than 21 days before bids are due for specific contracting opportunities, except where the contracts are awarded on an emergency basis;

(ii) a written notification shall be sent to such minority and women's trade and professional associations and contractors' associations as are designated by SLDC about the availability of contracting opportunities no less than 21 days before bids are due, except where the contracts are awarded on an emergency basis, in which case the notice shall be sent as soon as may be;

(iii) all contract solicitations shall include the MBE/WBE policy and any other materials required;

(iv) all contracting opportunities shall be evaluated in an effort to divide the total requirements of a contract to provide reasonable opportunities for minority and women's business enterprises;

(v) guidelines shall be established to ensure that a notice to proceed is not issued until signed letters of intent or executed agreements with the MBE's and WBE's proposed in the bid documents have been submitted; and

(vi) actions shall be taken to ensure that all required statistics and documentation are submitted to SLDC as requested.

(c) The contracting agency shall annually formulate a contract forecast estimating the number, probable monetary value, type of contracts and the estimated solicitation date for the contracts the contracting agency expects to award in the upcoming year. In addition, an implementation plan describing how the contracting agency will accomplish its MBE/WBE utilization goals shall be formulated. Each contracting agency will submit these documents to SLDC on or before June 30.

(d) The contracting agency shall make quarterly reports to SLDC concerning the agency's progress in achieving the goals established by this order.

3. It shall be the responsibility of each bidder and proposer to adhere to the procedures and provisions set forth in this order.

(a) each bidder and proposer must complete an MBE and WBE Utilization Form and identify therein its commitment, if any, to utilize MBE's and WBE's. Any failure to complete and sign the MBE and WBE utilization form will result in the bid or proposal being declared nonresponsive. In its response to an invitation to bid or request for proposal, the bidder or proposer shall include the names of minority and women's business enterprises to whom it

intends to award subcontracts, if any, the dollar value of the subcontracts, and the scope of work to be performed;

(b) it is the bidder's or proposer's responsibility to ensure that all MBE's and WBE's projected for use have been certified by the City prior to bid opening;

(c) whenever additional contract supplements, extra work orders, or change orders are made that individually, or in the aggregate, increase the total dollar value of the original contract, the contractor shall make every effort to maintain the level of MBE and WBE participation as established in the original contract;

(d) the awardee of a contract must submit copies of executed agreements with the MBE's and WBE's being utilized;

(e) the awardee of a contract must submit reports and documentation as required by SLDC, verifying payments to the MBE's and WBE's being utilized.

4. Contracting Agencies, contractors, subcontractors, and the construction clearinghouses shall consider, and follow where appropriate, the following guidelines in making good faith efforts to meet the goals of this order. All good faith efforts shall be made prior to bid opening. These guidelines are not all inclusive.

SHARED RESPONSIBILITIES FOR GOOD FAITH EFFORTS

(a) CONSTRUCTION CLEARINGHOUSE

The SLDC's contractors assistance agency and construction clearinghouse, the Contractor's Assistance Program (CAP), will distribute information on the City's needs to all of the M/WBEs who may be interested in performing all or part of the work that the City requires.

(i) DISTRIBUTION OF INFORMATION

By first class mail, fax or E-mail, the construction clearinghouse shall promptly distribute all information that the City and its plan holders may provide. The clearinghouse shall act on all information that it receives in no more that two business days.

(ii) DIRECTORY OF M/WBES IN THE RELEVANT AREA

The construction clearinghouse shall have access to sufficient quantities of the SLDC M/WBE Directory and the St. Louis Airport Authority's DBE Directory, including but not limited to information on the categories of work that each firm performs.

(iii) BONDING AND INSURANCE

The construction clearinghouse shall create and regularly update a directory of the bonding and insurance agents in the relevant area. Upon request, the clearinghouse should give a copy of the directory to any interested party. In addition, the clearinghouse should be prepared to provide the name, address and telephone number of a bonding or insurance agent who may be able to respond to a firm's request for assistance. The clearinghouse should also encourage and facilitate liaison between the bonding and insurance industries and the M/WBEs in the relevant area.

(b) CONTRACTING AGENCIES

(i) GENERAL

The City shall ensure, to the extent practical, that its plans and specifications are clear and reflect the actual requirements. The City shall delete any contractual provisions that would require M/WBEs to take unreasonable business risks.

(ii) ADVERTISING

The City will publicly advertise every project, taking advantage of general circulation magazines and newspapers, and any publications that target minorities or business women in the relevant area. The City shall also use the construction clearinghouse to notify all M/WBEs of all business opportunities. The City should run its advertisements and notify the clearinghouse as soon as practical, but not less than two weeks before the date on which bids are due. The City's advertisements and its notice to the clearinghouse shall include:

- The date, time, place and contact person for any pre-bid meeting;
- Expressly encourage M/WBEs to bid for the prime contract, or to the prime contractors holding plans for the project;
- Estimate the subcontracting opportunities that the project will provide, including but not limited to the type of work that prime contractors are likely to subcontract; and
- Explain that the City has provided a copy of the plans and specifications to the construction clearinghouse.

(iii) PRE-BID MEETINGS

The City may conduct a pre-bid meeting or make its project manager readily available to discuss the project with interested parties. In addition, the City shall reduce all questions and answers to writing and should promptly provide that information to all plan holders, including the construction clearinghouse.

The City shall use at least part of any pre-bid meeting to encourage prime contractors and M/WBEs to work together, providing an opportunity for all firms to identify themselves, and for all M/WBEs to identify the type (s) of work that

they perform. The City should also emphasize that it expects all firms to perform a commercially useful function.

(iv) PLAN HOLDERS

No more than seven calendar days after it has advertised the project, the City should give a list of plan holders to the construction clearinghouse, including the name, street address, telephone number, fax number, E-mail address and contact person for each firm. The City should update the list of plan holders at least once a week.

(v) PLANS AND SPECIFICATIONS

The City shall provide one copy of its plans and specifications to the construction clearinghouse free of charge. The plans and specifications shall be provided on the same date on which the project is formally advertised.

The City shall expressly direct and require its design professionals to satisfy these requirements and to make themselves readily available to all contractors, to the extent necessary to eliminate any ambiguities.

In addition, the City shall reduce all questions and answers to writing and should promptly provide that information to all plan holders, including the construction clearinghouse.

(c) PRIME CONTRACT BIDDERS AND OTHER PLAN HOLDERS

(i) NOTICE TO CLEARINGHOUSE

Any firm that intends to bid for the prime contract should have a notice of its intention delivered to the construction clearinghouse as soon as feasible, but no fewer than seven calendar days before the date on which the firm desires to have all quotes in hand.

That notice may be delivered by fax or E-mail, but should be in writing, in addition, it should:

- Include the name, street address, fax number, telephone number and E-mail address of a contact person;
- Specify the items of work that the plan holder may subcontract; and
- Expressly encourage M/WBEs to quote those items.

(ii) PRE-BID MEETINGS

The prime contract bidder should attend any pre-bid meeting that the City may schedule.

(iii) FOLLOW-UP WITH M/WBEs

The prime contract bidder should promptly return all calls, faxes, and E-mail that it receives from interested M/WBEs. The follow-up should take the form of a telephone call, fax or E-mail during normal business hours.

(iv) PLANS AND SPECIFICATIONS

Upon request, the plan holder should permit any interested M/WBE to review the project's plans and specifications at the plan holder's place of business during normal business hours. In addition, the prime contract bidder should have a least one employee available to help the M/WBE identify the specific item(s) in which the latter may have an interest.

(v) BONDING AND INSURANCE

The prime contract bidder should be encouraged not to deny a subcontract to an otherwise qualified and competitive, and if necessary, certified M/WBE solely because the latter cannot provide a performance or payment bond for the work, unless the bidder's bonding is contingent upon bonding for all subcontractors.

(vi) BID PACKAGES

The prime contract bidder should break its subcontracts down into discrete items or packages that at least some of the M/WBEs in the relevant area may find economically feasible to perform.

The prime contract bidder should not deny a subcontract to an otherwise qualified and competitive M/WBE solely because the latter cannot perform an entire package of related items, but the bidder may deny a request to repackage the work where doing so would jeopardize scheduling, or increase that bidder's cost of performing the original package by more than 5%.

(vii) SUBCONTRACTOR QUOTES

Where two or more quotes cover the same item(s) of work, the prime contractor bidder should have the discretion to accept the low quote.

(viii) LETTER OF INTENT

No more than five business days after the bid date, the prime contract bidder should send a letter of intent to the M/WBEs that the bidder intends to use on the project.

(ix) REASONS FOR REJECTION

No more than one week after it determines that it has been successful, the prime contract bidder should also communicate with any M/WBE that unsuccessfully bid for a portion of the work. The prime contract bidder should provide a legitimate and non-discriminatory reason for not using the M/WBE.

(x) WRITTEN POLICY

Independent and apart from its interest in any one project, the prime contract bidder should have a written policy stating that it affirmatively supports

subcontracting to M/WBEs, and that bringing such firms into the mainstream of the construction industry is a priority for that firm. This policy shall be made available to the City upon request.

(xi) LIAISON WITH M/WBEs

Independent and apart from its interest in any one project, the prime contract bidder should assign a senior official the responsibility of serving as a liaison between the firm and the M/WBEs in the relevant area.

(d) MINORITY AND WOMEN BUSINESS ENTERPRISES

(i) PRE-BID MEETINGS

The M/WBEs should attend any pre-bid meetings that the City may schedule.

(ii) EXPRESSION OF INTEREST

The M/WBE shall promptly call, send a fax or E-mail to any prime contract bidder to whom it would like to provide a quote. The M/WBE should clearly express an interest in providing a quote. The M/WBE should also send a notice of its interest in the project to the construction clearinghouse. To the extent practical, the M/WBEs should take such actions during normal business hours and at least five business days before the date on which bids are due.

(iii). SCOPE LETTER

At least five business days before the date on which bids are due, the M/WBEs should also give the prime contract bidder a scope letter that clearly defines the items that the M/WBE would like to perform.

SECTION FOUR. PUBLIC WORKS CONTRACTS

1. This section shall be applicable to all contracts let for public works contracts or improvements.

2. If a prime contractor's bid does not indicate an intent to utilize a minimum of 25% MBE participation and 5% WBE participation, the contractor shall request a waiver from the contracting agency who then must submit such request to SLDC.

3. SLDC will grant a waiver from meeting the 25% MBE and 5% WBE goals, or some portion of them, when documentation submitted by the bidder substantiates that all available resources have been exhausted in locating and soliciting bids or proposals from minority and women contractors, suppliers, and service providers.

4. MBE and WBE participation shall be counted in accordance with the following provisions:

   (a) A contracting agency may count as MBE or WBE participation only expenditures to MBE's and WBE's that perform commercially useful functions in the execution of a contract. An MBE or WBE is considered to perform a commercially useful function when it is responsible for executing a distinct element of the work and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE or WBE is performing a commercially useful function, SLDC will evaluate the amount of work subcontracted, industry practices, and other relevant factors.

   (b) A contracting agency may count as MBE or WBE participation the total dollar value of a contract with an MBE or WBE prime contractor less any amount that is subcontracted to non-MBE's/WBE's (including any persons or firms that are identified as MBE and/or WBE but are not so certified by the City of St. Louis).

   (c) The total dollar value of a contract with an enterprise owned and controlled by minority women may be counted as either minority or women's business participation, but not both. The contracting agency must choose which category of participation to which the dollar value is applied.

(d) A contracting agency may count as MBE or WBE participation a portion of the total dollar value of a contract with a joint venture equal to the percentage of MBE or WBE participation in the joint venture. The joint venture must be certified by the City of St. Louis and the MBE or WBE participant in the joint venture must be responsible for a clearly defined portion of the work to be performed, equal to a share in the ownership, control, management, responsibility, risks and profits of the joint venture.

(e) A contracting agency may count toward a bidder's MBE and WBE goals expenditures for material and supplies obtained from MBE/WBE suppliers and manufacturers, provided that the MBE/WBE assumes the actual and contractual responsibility for the provision of materials and supplies.

(i) A contracting agency many count a bidder's entire expenditure to a MBE/WBE manufacturer. A manufacturer is defined as an individual or entity that produces goods from raw materials or substantially alters them before resale.

(ii) The bidder may count twenty percent (20%) of its expenditures to MBE/WBE suppliers that are not manufacturers.

(f) A contracting agency may count as MBE or WBE participation the entire expenditure to an MBE or WBE supplier when the supplier:

(i) assumes the actual and contractual responsibility for furnishing the supplies and materials; and

(ii) is recognized as a distributor by the industry involved in the contracted supplies and materials; and

(iii) owns or leases a warehouse, yard, building or whatever other facilities are viewed as customary or necessary by the industry; and

(iv) distributes, delivers and services products with its own staff and/or equipment.

(g) A contracting agency may count as MBE and WBE participation only those firms that have been certified as MBE's and WBE's by SLDC prior to bid opening. If a firm listed by a bidder in its bid documents has not been so certified as MBE or WBE, the amount of participation it represents will be deducted from the total MBE or WBE participation proposed to determine the actual level of MBE and WBE participation proposed by the bidder.

(h) Joint ventures or mentor-protégé-relationships between prime contractors and subcontractors with local MBE and WBE firms are encouraged.

(i) Participation of MBE and WBE firms located outside of the St. Louis Metropolitan Statistical Area (MSA) shall not count towards the goals established in this order.

5. To meet the requirements of the order, the following guidelines must be followed by prime contractors:

(a) For any work to be subcontracted or materials to be supplied, prime contractors shall solicit bids from MBE's and WBE's to the maximum extent possible, referring to the City's Directory as necessary. All firms, including non-MBE's and non-WBE's, should be solicited in the same time period. If an MBE or WBE firm submits the low or equally low bid for work to be subcontracted or materials to be supplied, the prime contractor shall use the MBE or WBE firm unless the bid is non-responsive or the prime contractor is able to document that the MBE or WBE firm is unqualified or otherwise unable to perform the work or supply the needed materials. Where second tier subcontracting is to occur, the same procedure shall be employed for each type of work or materials to be supplied under a second tier subcontract.

(b) All solicitations shall be made prior to the bid opening and there shall be no negotiation of bids or "bid shopping" by the contracting agency. Contractors

bidding on more than one contract must solicit bids from MBE's and WBE's for each contract for which they are bidding regardless of the proximity of the bid dates or the previous lack of responsiveness of MBE's and WBE's.

(c) Prime contractors may count as MBE or WBE participation only those firms that have been certified as MBE's or WBE's by the City of St. Louis prior to the bid opening.

(d) Joint ventures or mentor-protégé relationships between prime contractors and subcontractors with local MBE and WBE firms are encouraged.

(e) Participation of MBE and WBE firms located outside the MSA shall not count towards the goals established in this order.

6. The contracting agency shall notify SLDC of the date and time for the formal bid opening. After the bids have been opened and read, the contracting agency will review the M/WBE Statement, included as part of the bid documents, to determine whether the low bidder intends to meet the MBE and WBE participation goals established by this order. If the low bidder does not meet the specified goals for MBE and WBE participation, the low bidder shall be instructed to request a total or partial waiver of the goals.

7. Within 48 hours following bid opening the apparent low bidder, and any other bidder still desiring to be considered for contract award, shall submit to the Contracting Agency the M/WBE Utilization Plan, and any other documents required by the bid documents, including, where appropriate, a request for waiver. If the M/WBE Utilization Plan does not meet the project goals, the bidder shall seek a partial or total waiver of the M/WBE goals. The application for waiver of all or part of the M/WBE goals shall include full documentary evidence of the bidder's good faith efforts to meet the goals prior to bid opening and why the request for waiver should be granted. The application, which shall

be in writing, must include a narrative, affidavits or exhibits which verify the actions taken by the bidder to meet the M/WBE goals.

8. The contracting agency will conduct a preaward conference following the bid opening. A representative from SLDC and SLDC's designated minority and women's contractors assistance agency shall attend this meeting. At that time, the contracting agency will review the bidder's proposed MBE and WBE participation. If the bidder fails to meet the goals established by this order, it will be allowed to request a waiver from those provisions. The waiver request must be supported by evidence establishing that the bidder has exhausted all available resources in locating and soliciting bids or proposals from minority and women's businesses and has found it impossible to meet the established goals. Denial of a waiver may be appealed by the bidder, within 10 days of notice of the denial, to the Mayor, who shall rule upon the appeal in due course. Failure on the low bidder's part to exhaust all reasonable methods in a good faith effort to solicit bids prior to bid opening from the MBE and WBE firms listed in the City's Directory may place the award of the contract to the low bidder in jeopardy.

9. Prior to the preaward conference, copies of the bid documents will be distributed to SLDC. SLDC will immediately begin a review of the bid documents and, within two weeks following the preaward conference, will make a recommendation as to the apparent low bidder's good faith efforts to meet the city's goals prior to bid opening. In making this determination, SLDC will contact MBE's and WBE's to verify that the apparent low bidder solicited bids from each of them, that the MBE and WBE subcontractor bid amounts listed accurately reflect the amounts actually quoted by those firms and, in the case of those MBE/WBE firms proposed to be utilized by the low bidder, that the apparent low bidder has tentative agreements with them in the amounts shown. For work being

subcontracted to non-MBE/WBE firms, SLDC will contact the certified MBE and WBE firms in that particular trade, service or supply area to verify that, after solicitation of bids by the proposed prime contractor, the MBE and WBE firms submitted high or non-responsive bids or no bids at all. After the verification process, SLDC may make a positive recommendation to the contracting agency for contract award to the low bidder and/or grant the request for a waiver to the MBE/WBE goals established by this order, or SLDC may recommend denial of the contract award and/or the request for a waiver. The contracting agency shall not award any contract in excess of $10,000 without the positive recommendation of the SLDC.

10. Each contracting agency shall maintain files documenting the efforts of successful bidders to achieve the City's goals regarding utilization of minority and women's business. In addition, each contracting agency is responsible for documenting that the prime contractor (including MBE and WBE prime contractors) has signed and valid contracts with each MBE and/or WBE subcontractor proposed by the prime contractor in its bid documents. The contracting agency shall not authorize any payments to the prime contractor until acceptable documentation has been submitted to SLDC and the contracting agency.

11. At contract completion, the contracting agency shall obtain final documentation of MBE and WBE participation. The contracting agency must have complete and acceptable documentation as determined by SLDC of amounts paid to all project MBE and WBE subcontractors on file before the final payment is made to the prime contractor.

12. Representatives of the contracting agency and/or SLDC or its designee shall make periodic visits to the project site to verify minority and women's business enterprise participation.

13. In the event that a public works or improvement contract is awarded on an emergency basis, the contracting agency shall give preference to MBE's and WBE's if, at the time

that the contract is let, those contracts that have been awarded as of that date, do not, in the aggregate, meet the City-wide goals specified in this order.

14. The provision of this order shall be made part of all contracts regulated by this order.

## SECTION FIVE. SERVICE CONTRACTS

1. It shall be the goal of each contracting agency where anticipated service contracts, including professional service contracts, for any year exceed the sum of $150,000 in the aggregate that 25% of the aggregate value of contracts awarded each fiscal year be let with MBE's and that 5% of the aggregate value of contracts awarded each fiscal year be let with WBE's.

2. It shall be the goal of the city that of the aggregate value of contracts awarded by contracting agencies that anticipate letting service contracts, including professional service contracts, aggregating $150,000 or less, 25% shall be let with MBE's and 5% be let with WBE's.

3. The methods by which contracting agencies shall pursue those goals shall include, but not be limited to,

   (a) consultation with SLDC and observation of all rules and regulations promulgated by SLDC;

   (b) active solicitations of proposals by MBE's and WBE's;

   (c) encouragement of joint ventures or mentor-protégé relationships that include MBE's and WBE's;

   (d) encouragement of subcontracting to MBE's and WBE's;

   (e) solicitation of proposals from MBE and WBE firms in a time frame that will allow those firms to respond;

   (f) division of contract requirements where possible to allow MBE's and WBE's reasonable contracting opportunities; and

(g) contacting minority and women trade and professional organizations to solicit participation.

4. All requests for services, including professional services, shall require proposers to make every good faith effort to utilize minority business enterprises and women's business enterprises as subcontractors and suppliers whenever possible. Proposers shall be required to submit their projected utilization of minority and women's business enterprises, if any, along with a description of the efforts made to utilize such businesses.

5. Each contracting agency shall make a report to SLDC of the MBE and WBE participation in each professional service contract that it makes.

6. Joint ventures or mentor-protégé relationships between prime contractors and subcontractors with local MBE and WBE firms are encouraged.

7. Participation of MBE and WBE firms located outside the MSA shall not count towards the goals established in this order.

8. Contracts with non-MBE's and non-WBE's shall be counted towards the MBE and WBE goals under the following circumstances and according to the following standards:

   (a) where the non-MBE or non-WBE firm assigns one or more minority or women partners or owners, 75% of the billable hours attribute to that partner or owner shall be counted as MBE or WBE participation, as the case may be.

   (b) where the non-MBE or non-WBE firm assigns one or more minority or women associates or employees, 25% of the billable hours attributed to the associates or employees shall be counted as MBE or WBE participation, as the case may be.

   (c) where the non-MBE or non-WBE enters into a subcontract with an SLDC-certified MBE or WBE, that portion of the value of the contract that is subcontracted shall be counted as MBE or WBE participation as the case may be.

## SECTION SIX. SUPPLY CONTRACTS

1. The goal of the City of St. Louis is that 25% of the value of all contracts let and purchases made by the Supply Commissioner shall be let or made with MBE's and that 5% of the value of all contracts let and purchases made by the Supply Commissioner shall be let or made with WBE's.

2. All contracts let by the Supply Division for the purchase or lease of materials, equipment, supplies, commodities or services, the estimated cost of which exceeds $500, shall be subject to this goal;

3. The methods by which the Supply Commissioner shall pursue this goal shall include but not be limited to the following:

   (a) The Supply Commissioner shall solicit bids from minority business enterprises and women's business enterprises certified to supply the required materials, equipment, supplies or services;

   (b) SLDC shall provide the Supply Commissioner with a list of minority business enterprises and women's business enterprises qualified to provide each of those commodities that the Supply Commissioner indicates are required by the City;

   (c) The Supply Commissioner shall notify SLDC prior to solicitation of bids whenever no such qualified businesses are available;

   (d) SLDC shall attempt to identify such qualified businesses, and if successful, shall notify the Supply Commissioner of their availability; and

   (e) The Supply Commissioner shall provide such minority business enterprises and women's business enterprises every practical opportunity to submit bids.

4. Joint ventures or mentor-protégé relationships between prime contractors and subcontractors with local MBE and WBE firms are encouraged.

5. Participation of MBE and WBE firms located outside the MSA shall not count towards the goals established in this order.

SECTION SEVEN. CONCESSION CONTRACTS

1. It shall be the goal of each contracting agency to award concession contracts in such a manner as to achieve the City's goals for MBE and WBE participation.

2. The methods by which contracting agencies shall pursue this goal shall include, but not be limited to, the following:

   (a) consultation with SLDC and observation of all rules and regulations promulgated by SLDC;

   (b) active solicitations of proposals by MBE's and WBE's;

   (c) encouragement of joint ventures or mentor-protégé relationships that include MBE's and WBE's;

   (d) encouragement of subcontracting to MBE's and WBE's;

   (e) solicitation of proposals from MBE and WBE firms in a time frame that will allow those firms to respond;

   (f) division of contract requirements where possible to allow MBE's and WBE's reasonable contracting opportunities;

   (g) contacting minority and women trade and professional organizations to solicit participation.

2. All requests for concession proposals shall require proposers to make every good faith effort to utilize minority business enterprises and women's business enterprises as subcontractors and suppliers whenever possible. Concession contract proposers shall be required to submit their projected utilization of minority and women's business enterprises, if any, along with a description of the efforts made to utilize such businesses.

3. Joint ventures or mentor-protégé relationships between prime contractors and subcontractors with local MBE and WBE firms are encouraged.

4. Participation of MBE and WBE firms located outside the MSA shall not count towards the goals established in this order.

## SECTION EIGHT. BONDING ASSISTANCE

SLDC shall develop a program to assist small business enterprises, including MBE's and WBE's in obtaining information and resources on the availability of bonding for public sector contracts. SLDC shall provide;

1. ~~Individualized counseling;~~

2. Conduct seminars relating to bonding;

3. Explore methods of creating a bonding program for small businesses with public and private sector resources;

4. Monitor the bonding practices in the local market and to document any instances of discrimination in the bonding industry; and

5. Provide advice and information to the Board of Public Service or the appropriate user department as to the level of bonding generally available to subcontractors, so that such information may be considered in the process of reducing such projects to a size that small business enterprises might successfully bid.

## SECTION NINE. FINANCIAL ASSISTANCE

SLDC will assist small business enterprises in locating available financial resources in the St. Louis business sector. SLDC shall:

1. Act as a clearinghouse for information on financial assistance programs for small business enterprises, MBEs, and WBEs;

2. Assist in packaging loan requests for small business enterprises;

3. Contract seminars relating to financing;

4. Monitor and document any instances of discrimination against small business enterprises, MBEs, and WBEs; and

5. Explore public and private resources to provide financial services to small business enterprises.

## SECTION TEN. EMPLOYMENT

All firms doing business with the City of St. Louis are encouraged to act affirmatively to hire residents of the City of St. Louis as employees, with particular emphasis on residents of the City who are members of minority groups or who are women.

## SECTION ELEVEN. CITY-FUNDED PROJECTS

All contracts between the City of St. Louis and a second party wherein the City of St. Louis provides City or other governmental funds to the second party and wherein the second party agrees to provide services or engage in a project shall contain a provision obligating the second party to observe the program established by this Order, except with respect to non-construction contracts to which not-for-profit corporations are a party.

## SECTION TWELVE. PENALTIES

1. If SLDC determines that a contractor, bidder or proposer has failed to comply with the City's program regarding utilization of minority and women's business enterprises, it shall report its determination to the Mayor.

2. The Mayor, pursuant to Article VII, 1 of the Charter, may subject the offending party to any or all of the following penalties and sanctions:

   (a) withholding of contract award;

   (b) suspension of contract;

   (c) withholding of payments;

(d) rescission of contract based upon a material breach of contract pertaining to MBE and/or WBE participation;

(e) refusal to accept a proposal; and

(f) disqualification of a bidder, proposer or contractor from eligibility for providing goods or services to the City for a period not to exceed one year.

3. The Mayor shall report the imposition of any penalty to the Comptroller and to the City Counselor.

**SECTION THIRTEEN. MINORITY AND WOMEN'S BUSINESS ENTERPRISE ADVISORY COMMITTEE**

1. There is hereby created and established an advisory committee to be known as the Minority and Women Business Enterprise Advisory Committee.

2. The committee shall consist of the following ten (10) members appointed by the Mayor, with the consent of the Board of Aldermen:

(a) One (1) member of the Commission of the Civil Rights Enforcement Agency;

(b) One (1) member of the Contractors Assistance Program (CAP);

(c) One (1) member of the St. Louis Minority Contractors Association;

(d) One (1) member of the National Association of Women in Construction;

(e) One (1) member of the Associated General Contractors of St. Louis;

(f) One (1) member of the Hispanic Chamber of Commerce;

(g) One (1) member of the National Indian Community Association;

(h) One (1) member of the Asian-Americans for Equal Opportunity;

(i) One (1) member of the St. Louis Minority Business Council; and

(j) One (1) member of the St. Louis Council of Construction Consumers;

3. Members shall serve for staggered terms of three (3) years. Initially four (4) members shall be appointed for a term of three (3) years, three (3) members shall be appointed for a term of two (2) years and three (3) members shall be appointed for a term of one (1) year. Vacancies shall be filled in the same manner as the original appointments for the remainder of the vacant term. Each member shall serve without compensation.

4. The committee shall elect a Chairman and a Secretary who shall each serve for three (3) years. One (1) month prior to the end of the Chairman's and the Secretary's term, successors shall be elected. The committee shall adopt rules consistent with applicable laws for the conduct of its business.

5. The committee shall meet quarterly to review compliance with this Order. In addition, the committee shall at a minimum meet twice annually in open public session to receive general testimony from the public. All minutes and records of the committee shall be open to the public.

6. The committee shall monitor the effectiveness of the City's program described in this order and make such recommendations to SLDC as it sees fit. The actions, decisions and recommendations of the Committee are to further the policies and goals of this Order and shall not be final or binding on the City but shall be advisory only.

SECTION FOURTEEN. TERM

The program established by this order shall cease June 30, 2002, except SLDC shall submit its final report on September 30, 2002.

SECTION FIFTEEN. REPORT

No later than September 30, 1998 and beginning in 1998, and every year thereafter, SLDC shall deliver a report to the Mayor reviewing the progress made as of the preceding June 30 in achieving the

City's goals, and making such recommendations as to further remedial action that should be taken, if any.

## SECTION SIXTEEN. FEDERAL AND STATE REGULATIONS

Projects that utilize federal or state funds in whole or in part must comply with any applicable federal or state regulations and such regulations may not be waived by the City.

Dated: July 24, 1997

Signed by: Clarence Harmon

Mayor, City of St. Louis