

## **Economic Opportunity Plan City of Philadelphia**

### **I. Introduction**

As part of the City of Philadelphia's Code requirements and pursuant to the recent approval of the Cultural and Commercial Corridor Bond and the New River City Bond by Philadelphia City Council in late 2006, standards of the City's Economic Opportunity Plan (herein after referred to as the "Plan") were elevated in an effort to encourage a higher percentage of employment of disadvantaged business participation in business opportunities for minorities, women and disabled business enterprises. The basis of this Plan was derived from the aforementioned Bond Programs and from the Neighborhood Transformation Initiative ("NTI") bond issue that was adopted in 2002. The NTI Plan addressed disadvantaged businesses participation in business opportunities and for minorities, women and Philadelphia residents to participate in the employment created by NTI programs. There has been great success with the NTI program and therefore City Council has requested that for all projects requiring City Council approval the following standards be encouraged.

For all contracting efforts, each prime consultant and contractor shall use its good faith and nondiscriminatory efforts to provide joint venture partnerships and sub consulting and subcontracting opportunities for disadvantaged business enterprises (collectively, M/W/DS-DBEs) certified by the City of Philadelphia's Minority Business Enterprise Council ("MBEC"). In order to maximize opportunities for as many businesses throughout the region as possible, the Plan shall provide the opportunity for each prime consultant and prime contractor to identify certifiable firms in their bid ("certifiable firms" shall mean those firms that are eligible for MBEC certification). These certifiable firms must be certified by MBEC no later than 10 calendar days after the date of the bid opening in order for their participation to count towards the prime's good faith efforts. For the overall program, each consultant and contractor's good faith and nondiscriminatory efforts shall be presumed if, during each phase of the project, the following levels of participation are achieved: 35% participation for M-DBEs, 12% participation for W-DBEs and 2% participation for DS-DBEs. These percentages for participation relate to the dollar value of subcontracts including add-ons, change orders and scope adjustments. The assigned range shall be attached to each bid package prior to any advertisement for bid.

Furthermore, the Owner shall require its contractors to make a good faith effort to employ minority and female craft persons in the construction workforce equal to goals of 43% and 7%, respectively, of all work hours for each skilled and semi-skilled trade. In support of local initiatives that target economic benefits to low-income persons and underemployed craft persons, Respondents shall encourage their contractors to make a good faith effort to maximize employment opportunities for apprentices and pre- apprentice craft persons with a participation goal of 25% minority and 10% female, respectively, of all first-year and other apprentices. Respondents will include these goals in all construction-related prime contracts and shall require its prime contractors to reference these goals in their commercial subcontracts. The City of Philadelphia has set as a goal the utilization of Philadelphia residents on the workforce equal to 60% of all workforce hours.

**Recognizing that each project requiring City Council approval has its differences, MBEC shall review the specific scope of work for each project and assign appropriate benchmarks of participation.**

## **II. Project and Plan**

The project consists of the building of \_\_\_\_\_ (referred to hereafter as the “Project”) for \_\_\_\_\_ (referred to hereafter as the “Owner”) on parcels of ground located at \_\_\_\_\_, in the City of Philadelphia, Pennsylvania. The purpose, standards and procedures of this Plan are the expressed wishes of the Owner as set forth herein. Participants shall include consultants, construction management, prime contractors, sub-contractors and vendors of supplies, equipment and materials. All participants will be obligated to fully comply with the requirements of the Plan.

The Owner is committed to provide meaningful and representative opportunities for minority-owned, women-owned and disabled-owned business enterprises, and economically disadvantaged-owned business enterprises (collectively referred to hereafter as “M/W/DS-BEs”) and individuals that are locally based in all phases of the Project. It is expected all Participants make the same commitment. Each Participant shall not, and furthermore, shall ensure that their associates, partners or representatives shall not, discriminate on the basis of race, color, religion, sex or natural origin in the award and performance of contracts pertaining to the Project or with respect to any and all related employment practices.

All participants in the Project shall observe and be subject to the enforcement of all relevant City of Philadelphia, Commonwealth of Pennsylvania and federal laws, ordinances, orders, rules and/or regulations regarding M/W/DS-BE firms and locally-based business enterprises. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable laws to ensure that M/W/DS-BE firms are afforded a meaningful and representative opportunity to participate in contracts relating to the Project.

For the purposes of this Plan, the term “minority” shall refer to the following: African American or Black (all persons having origins in any of the Black African racial groups); Hispanic/Latino (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Asian and Pacific Islander (all persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and Native Americans (which includes all persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians).

Agencies and representatives of the City of Philadelphia and/or Commonwealth of Pennsylvania may be consulted regarding the appropriate inclusion of M/W/DS-BE firms and socially/economically disadvantaged professionals in this Project as outlined in this Plan and with regard to its implementation.

### **III. Procedures for Determination**

#### **A. Project Scope.**

[THIS PROJECT SCOPE SECTION IS TO BE FILLED OUT BY A REPRESENTATIVE OF THE ENTITY FOR WHICH THIS EOP IS BEING WRITTEN.]

#### **B. Duration.**

This Plan shall apply to contracts awarded and procurements by the Owner and all Participants throughout the entire length of the Project.

#### **C. Statement of Objectives.**

The Objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages and solicitations for the Projects and communicated to all Participant levels.

#### **D. Good Faith Efforts.**

Participants shall reasonably exhaust the use of best and good faith efforts as defined hereunder to provide appropriate participation and utilization opportunities for M/W/DS-BE firms. All Project contractors and vendors will be required to do likewise, consistent with best and sound procurement practices, and with applicable law. *Best and good faith efforts* will be deemed adhered to when a Participant meets the criteria set forth in this section and demonstrates and documents its efforts throughout the length of the Project. If the established ranges for inclusion of M/W/DS-BE firms are not met, a Participant must submit a Subcontracting/Vendor Plan showing how *best and good faith efforts* were made to achieve said ranges. This plan must include, but not be limited to, the following:

- Written request for assistance to the Owner three (3) business days prior to the bid due date.
- Solicitation through newspapers, periodicals advertisements, job fairs, etc. that focus on construction and are minority-owned and/or focused.
- Telephone logs.
- Evidence of solicitation to qualified and MBEC certified M/W/DS-BE firms.
- Bid results and reasons as to why no awards were made to M/W/DS-BE firms.
- Use of City/MBEC-certified business firms via their directory.
- Correspondence between contracting firm and any M/W/DS-BE firms.
- Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting
- Specific, general and technical assistance offered and provided to M/W/DS-BE firms related to their portion of the project.
- Proof there was notification of and access to bid documents at company or other office locations for open and timely review.

#### **E. Monitoring of *Best and Good Faith Efforts*.**

Owner requirements relative to monitoring of *best and good faith efforts* of Participants engaged in the Project shall be established by the Owner in consultation with appropriate city, state and federal

agencies and/or private professional entities to include (in addition to further measures as may be required) the following:

- 1) Participants shall submit copies of signed contracts and purchase orders with M/W/DS-BE subcontractors.
- 2) Participants shall be ready to provide evidence of payments to their subcontractors, sub-consultants and supply vendors for participation verification. This documentation should be provided monthly or included with every request for payment to Contractors.
- 3) At the conclusion of work, the Subcontractor shall provide a statement or other evidence of the actual dollar amounts paid to M/W/DS-BE subcontractors.
- 4) All On-site Contractors shall be prepared to submit "certified" payrolls listing the following items for all on-site employees:
  1. Full name
  2. Social Security number
  3. Full address
  4. Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
  5. Gender
  6. Race
  7. Hours worked
  8. All withholding (e.g., laborer, local, state, FICA, etc.)
  9. Name of Contractor and Indication of Prime for Subcontractors
  10. Name of Project
- 5) Certified payroll reports shall be signed by an authorized company officer.
- 6) The Participant shall comply with all applicable requirements of any federal, state or local law ordinance or regulation relating to contract and payroll compliance.

**F. Documentation of *Best and Good Faith Efforts* and Compliance.**

Two components have been established to facilitate the inclusion of M/W/DS-BE firms as contractors and vendors, and minority/female/local residents as Project site workforce participants:

**1) M/W/DS-BE contracting and vending participation levels: the basis for each determination will be the total dollar amount of the bid/contract OR the total dollar amount of the bid/contract for the identified Project task.**

**2) Minority/Female/Local Resident Employment Participation Levels: the basis for each determination will be the projected total on-site field employee hours divided by the number of minority, female and local residents' employee hours anticipated to be performed on the Contractor's payroll, and each of the Contractor's on-site subcontractors payrolls.**

### **G. Oversight Committee**

The Owner, in consultation with the appropriate agencies and entities, will establish and identify the members of a Project Oversight Committee, including representatives from the Owner, the Developer and/or the General Contractor and Construction Manager, Minority Business Enterprise Council, City Council, community organizations and the Building Trades. Participants will engage in monitoring, reporting and problem solving activities which are to include regular meetings to address all matters relevant to further development of the Plan, carrying out its implementation and the successful completion of the Project.

A meeting of the Oversight Committee shall be called by the Owner within one (1) month of the initiation of this Project and shall meet on a regular basis during all phases of the Project. Participants will engage in monitoring, reporting and problem solving activities which are to include regular meetings to address all matters relevant to further development of the Plan, carrying out its implementation and the successful completion of the Project.

#### **IV. Certified M/W/DS-BE Firms**

**A.** Only businesses that are owned, managed and controlled, in both form and substance, as M/W/DS-BE firms shall participate in this Project's Economic Opportunity Plan. To ensure this standard, all businesses, including joint ventures, must be certified by the Philadelphia Minority Business Enterprise Council (MBEC) or members of the Pennsylvania Unified Certification Program (UCP). Both agencies are authorized to certify such enterprises.

**B.** M/W/DS-BE certification should not be the sole determination of a Bidder's or Contractor's financial or technical ability to perform specified work. The Owner reserves the right to evaluate the Contractor's or Subcontractor's ability to satisfy financial, technical, or other criteria separate and apart from said certifications before bid opening. Pre-qualification conditions and requirements shall be conveyed in a fair, open and non-discriminatory manner to all.

**C.** The Owner recognizes that M/W/DS-BE certifications may expire or the firm may experience de-certification by an authorized governmental entity. Certifications that expire during a firm's participation on a particular phase of the Project may be counted toward overall goals for participation ranges. However, said firm **MUST** become re-certified prior to consideration for future goal credit in the Project's Plan. If a firm has been de-certified, said firm would not be eligible to participate.

**D.** An M/W/DS-BE and/or DBE submitting as the prime contractor is required, like all other Participants, to submit a bid and/or RFP that is responsive to the Reauthorized Executive Order 02-05, and applicable law, and will only receive credit, in its certification category, for the amount of its own work or supply effort on the specified work in the bid and or RFP. In order to maximize opportunities for as many businesses as possible, a firm that is credited in two or more categories (e.g. MBE and WBE, or WBE and DSBE) will only receives credit as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Bidders/Respondents will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

## V. Non-Compliance

**A.** In cases where the Owner has cause to believe that a Participant, acting in good faith, has failed to comply with the provisions of the Plan, the Owner and/or the Oversight Committee, with the assistance and consultation of the appropriate agencies and professional entities, shall attempt to resolve the noncompliance through conciliation and persuasion.

**B.** In conciliation, the Participant must satisfy the Owner and the Oversight Committee that they have made their *best and good faith efforts* to achieve the agreed upon participation goals by certified M/W/DBE firms. *Best and good faith efforts* on the part of the Participant/Contractor include:

- 1) Entering into a contractual relationship with the designated M/W/DBE firm in a timely, responsive and responsible manner, and fulfilling all contractual requirements, including payments, in said manner.
- 2) Notifying all parties, including the Owner, the M/W/DS-BE firm, the Oversight Committee and all relevant Participants, of any problems in a timely manner.
- 3) Requesting assistance from the Owner and/or the Oversight Committee in resolving any problems with any M/W/DS-BE firm.
- 4) Making every reasonable effort to appropriately facilitate successful performance of contractual duties by a M/W/DS-BE firm through timely, clear and direct communications.

**C.** In cases where the Owner and/or the Oversight Committee has cause to believe that any Participant has failed to comply with the provisions of the Plan, they shall conduct an investigation.

**D.** After affording the Participant notice and an opportunity to be heard, the Owner and/or the Oversight Committee are authorized to take corrective, remedial and/or punitive action. Such actions may include, but are not limited to:

- 1) Declaring the Participant as non-responsible and/or non-responsive, with a determination as ineligible to receive the award of a contract, continue a contract and/or ineligible for any other future contracts affiliated with this Plan;
- 2) **Suspending the violating Participant from doing business with the Owner;**
- 3) Withholding payments to the violating Participant; and/or
- 4) Pursuing and securing any relief which the Owner and/or the Oversight Committee may deem to be necessary, proper, and in the best interest of the Owner and the Project, consistent with applicable policy and law.

**E.** A Participant may appeal a determination of non-compliance with this Plan by filling a written grievance with the Owner and/or its Oversight Committee.

**F.** Within five (5) working days the Owner and/or the Oversight Committee shall issue and serve a written notice/determination, together with a copy of the grievance as filed, to all persons named in the grievance.

**VI. Participation Goals and Ranges**

The following employment goals have been set for the Project:

Employment	Empowerment Zone Resident	Minorities	Females	Disabled
Construction Workforce				
Permanent Workforce				
- Hourly				
- Management				

The following contract ranges have been set for the Project:

Contracts	Minority Owned	Female Owned	Disabled Owned
Professional Services			
Construction Contractors			
Operational Service Providers			

**VII. Guidelines for Joint Venturing**

**A.** Joint Venture relationships with certified M/W/DS-BE firms must meet the following criteria in order to receive credit towards participation goals:

- 1) The M/W/DS-BE partner(s) must be certified by MBEC, UCP or a qualified governmental agency authorized by law to certify such enterprises prior to proposal/bid submission.
- 2) The M/W/DS-BE partner(s) must be substantially involved in significant phases of the contract including, but not limited to, the performance (with its own work force) of a portion of the on-site work, and of administrative responsibilities, such as bidding, planning, staffing and daily management.
- 3) The business arrangements must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their respective ownership interests).
- 4) If a certified partner is an MBE, WBE or DSBE, the participation will be credited only to the extent of the partner's ownership interest in the joint venture; there will remain a requirement to meet M/W/DS-BE goals.

\_\_\_\_\_  
Owner Representative

\_\_\_\_\_  
Date