City of Philadelphia
Economic Opportunity Plan
BID 4220GCON, 4220MECH, 4220ELEC

I. Introduction, Definitions, Participation Ranges and Goals

A. Chapter 17-1600 of The Philadelphia Code requires the development and implementation of "Economic Opportunity Plan(s)" for certain classes of contracts and covered projects as defined in Section 17-1601. The Economic Opportunity Plan ("Plan") memorializes the successful Bidder's Best and Good Faith Efforts to provide meaningful and representative opportunities for Minority Business Enterprises ("MBEs"), Woman Business Enterprises ("WBEs") and Disabled Business Enterprises ("DSBEs"), Disadvantaged Business Enterprises[2] ("DBEs") (collectively, "M/W/DSBEs") and maintain an appropriately diverse building trades workforce in connection with this contract for Job Order Contracting (JOC).

This Invitation and Bid and any resulting contract (which includes all Job Orders issued thereunder) are subject to the Plan requirements as described in Section 17-1603 (2). Accordingly, by submission of its Bid, Bidder certifies that Bidder will use its Best and Good Faith Efforts to achieve the M/W/DSBE participation ranges described in Section I D and employ a diverse workforce. This certification constitutes a legally binding commitment to abide by the provisions of this Plan.

Bidder hereby verifies that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and is notified that the submission of false information by Bidder is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities. Bidder also acknowledges that if it is awarded a contract resulting from this Invitation and Bid, it is a felony in the third degree under 18 Pa.C.S. Section 4107.2 (a)(4) if, in the course of this contract, it fraudulently obtains public moneys reserved for or allocated or available to minority business **enterprises or women's business enterprises.**

B. For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by the City of Philadelphia through its Office of Economic Opportunity ("OEO"). Only the work or supply effort of firms that are certified as M/W/DSBEs by an OEO approved certifying agency3 will be eligible to receive credit as a Best and Good Faith Effort; in order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at www.phila.gov/oeo/directory.

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[2]Disadvantaged Business Enterprises ("DBEs") are those socially or economically disadvantaged minority and woman owned businesses certified under 49 C.F.R. Part 26. If Bidder makes solicitation(s) and commitment(s) with a DBE, Bidder shall indicate which category, MBE or WBE, is submitted for credit.

[3]A list of "OEO approved certifying agencies" can be found at www.phila.gov/oeo Applicant is also strongly encouraged to search the Pennsylvania Unified Certification Program ("PaUCP") Directory which offers a robust listing of DBEs; the PaUCP Directory is found at www.paucp.com.

C. For this Plan, the term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means a Bidder's efforts to: provide meaningful and representative opportunities for participation by M/W/DSBEs in issued Job Orders and maintain an appropriately diverse workforce throughout the duration of the contract.

D. Participation Ranges and Goals

1. M/W/DSBE Participation Ranges:

As a benchmark for evaluating Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on the aggregate awarded value of Job Orders issued under the contract, including any amendments thereto. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

BID	MBE		WBE	DSBE
GCON	25% - 30%	And	3% - 5%	No Range
MECH	15% - 20%	And/or	15% - 20%	No Range
ELEC	10% - 15%	And/or	10% - 15%	No Range

The Successful Bidder is required, for each Job Order over $30,000, to submit its M/W/DSBE commitments on the OEO JOC Commitment Form, attached hereto.

2. Workforce Goals

Bidder agrees to use its Best and Good Faith Efforts to employ an appropriately diverse trades workforce including minority and female apprentices and journeymen.

II. Bidder Commitments

A. Bidder, by submission of this Bid, certifies that Bidder will use its Best and Good Faith Efforts to achieve the M/W/DSBE participation ranges described in Section I and employ a diverse workforce. The Bidder's identified commitment to use an M/W/DSBE on the OEO JOC Commitment Form constitutes a representation by Bidder, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Bidder has made a legally binding commitment with the firm for the work or supply effort described and the dollar/percentage amount(s) set forth on the form. In calculating the percentage of M/W/DSBE participation, Bidder shall apply the standard mathematical rules in rounding off numbers. In the

event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern.

1. Commercially Useful Function

A Bidder that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort in that regard only if its M/W/DSBE subcontractor performs a commercially useful function ("CUF"). An M/W/DSBE performs a commercially useful function when it performs a distinct element of the contract (as required by the work to be performed in accordance with the Bid Specifications) which is worthy of the dollar amount of the M/W/DSBE subcontract and the M/W/DSBE carries out its responsibilities by managing and supervising the work involved and actually self-performing at least twenty percent (20%) of the work of the subcontract with its own employees. For suppliers, an M/W/DSBE performs a commercially useful function when it is responsible for sourcing the material, negotiating price, determining quality and quantity, ordering the material and paying for it from its own funds. Commercial usefulness will be evaluated by the OEO and the amount of credit the Bidder receives towards the participation ranges will be determined by the OEO on a bid by bid basis as informed by prevailing industry standards and the M/W/DSBE's NAIC codes. To assist OEO in its evaluation, Bidder and/or its M/W/DSBEs may be asked to complete a CUF questionnaire. Participation that is not commercially useful will not be counted.

B. Letters of intent, quotations, and any other documents regarding commitments with M/W/DSBEs, including the OEO JOC Commitment Form, become part of the contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement. Any change in commitment, including but not limited to termination of the subcontract, reduction in the scope of committed work, substitutions for the listed firms, changes or reductions in the listed dollar/percentage amounts, must be pre-approved in writing by OEO. Throughout the term of the contract, Bidder is required to continue its Best and Good Faith Efforts.

C. In the event Bidder does not identify on the OEO JOC Commitment Form that it has made M/W/DSBE commitments equal to or above the participation ranges established for this Bid, Bidder must demonstrate to the satisfaction of OEO, through the submission of appropriate documentary evidence that the following actions were taken for the applicable Job Order:

1. Solicitation directed to both qualified M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Bidder must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without follow up, is not acceptable; and
2. Bidder provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the Job Order in a timely manner to assist them in responding to a solicitation; and
3. Bidder negotiated in good faith with interested M/W/DSBEs. A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of the Plan into consideration.

III. Evaluation of Bidder Responsibility

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate whether the Successful Bidder has made Best and Good Faith Efforts sufficient to achieve, on the aggregate value of all issued Job Orders, the M/W/DSBE participation ranges as described in Section I. OEO reserves the right to request further documentation and/or clarifying information from the Successful Bidder at any time during the term of the contract. OEO will review outstanding Job Orders and if OEO determines that M/W/DSBE participation is not being achieved at a level which would reasonably permit achievement of the M/W/DSBE Participation Ranges over the term of the contract because the Successful Bidder is not exercising Best and Good Faith Efforts, OEO may, subject to III B below, recommend to the Procurement Department institution of remedies and/or imposition of penalties all as described in Section V.

B. Administrative Reconsideration

1. If the OEO determines that the Successful Bidder is not making sufficient Best and Good Faith Efforts, the Bidder will be notified and may file a written appeal with the Executive Director of the OEO within forty-eight (48) hours of the date of notification; the decision of the Executive Director of OEO shall be final.

IV. Compliance and Monitoring of Best and Good Faith Efforts

A. The Successful Bidder agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Successful Bidder must provide as required and maintain the following contract documentation for a period of three (3) years following acceptance of final payment under the contract:

1. Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;

2. Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;

3. Telephone logs and correspondence relating to M/W/DSBE commitments.

B. The Successful Bidder shall ensure that all its on-site contractors submit, to the extent required by law, certified payrolls to the City's Labor Standards Unit in the format prescribed by that agency which includes hours worked by minority and female apprentices and journeypersons.

C. Prompt Payment of M/W/DSBEs

1. The Successful Bidder shall within five (5) business days after receipt of a payment from the City for work performed under a Job Order, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials). In connection with payment of its M/W/DSBE subcontractors, the Successful Bidder agrees

to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

2. Each month of the contract term and at the conclusion of the contract, the Successful Bidder shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the OEO JOC Commitment Form(s).

V. Remedies and Penalties for Non-Compliance

A. The Successful Bidder agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that the Successful Bidder hereunder has failed to comply with these requirements the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies below, which shall be deemed cumulative and concurrent:

1. Debar Successful Bidder from proposing on and/or participating in any future contracts for a maximum period of three (3) years.

2. Withhold from the contract payment(s) or any part thereof until corrective action is taken. If corrective action is not taken to the satisfaction of OEO, the City may, without institution of a lawsuit, deduct money in an amount equal to the M/W/DSBE shortfall in commitment which amount shall be collected and considered not as a penalty but as liquidated damages for the Successful Bidder's failure to comply with the contract.

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this Invitation and Bid nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in any contract resulting from this Invitation and Bid. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of any contract resulting from the Invitation and Bid except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

5/21/14

SIGNATURE OF BIDDER AND TITLE[4] DATE

[4]Bidder is required to sign and date, but the City reserves the right to obtain the Successful Bidder's signature thereon at any time prior to Plan certification. The Successful Bidder will receive from the City a certified copy of its Plan which will be filed by the Procurement Department with the Chief Clerk of City Council within fifteen (15) days of the Procurement Department's issuance of a notice of award and published by OEO, in a downloadable format, on the OEO website.

Angela Dowd-Burton 6/23/2014

ANGELA DOWD-BURTON, Executive Director, Office of Economic Opportunity[5] DATE

OFFICE OF ECONOMIC OPPORTUNITY
JOB ORDER CONTRACTING COMMITMENT FORM[6]

DATE_____

CONTRACT NO.	JOB ORDER ID and DOLLAR AMOUNT	MBE/WBE RANGE
PRIME CONTRACTOR	CONTACT PERSON	TELEPHONE NO.

COMPLETE THIS SECTION FOR EACH COMMITTED M/W/DSBE

NAME OF M/W/DSBE_____ CERTIFICATION TYPE_____

CONTACT PERSON_____ TELEPHONE NUMBER_____

DOLLAR AMOUNT of COMMITMENT_____

DESCRIPTION of WORK or SUPPLY EFFORT:

VERIFIED

I certify that I quoted the above price and type of work/supply effort identified above and will perform such work/supply effort in a commercially useful manner.

_____
Signature of M/W/DSBE

I certify on behalf of the Prime Contractor that I have made a legally binding commitment to use the M/W/DSBE identified above for the work/supply effort and in the dollar amount as stated.

_____
Signature of Authorized Representative of Prime Contractor

[5] Pursuant to Section 17-1603 (2) of The Philadelphia Code, the representative of the City of Philadelphia's Office of Economic Opportunity, the "certifying agency", certifies that the contents of this Plan are in compliance with Chapter 17-1600.
[6] Photocopy as needed for each committed M/W/DSBE