
EXHIBIT IV

Economic Opportunity Plan

I. Introduction, Definitions and Diversity Practices

A. This Project is subject to Chapter 17-1600 of The Philadelphia Code, which requires the development and implementation of an “Economic Opportunity Plan(s)” for certain classes of contracts and covered projects as defined in Section 17-1601. The Economic Opportunity Plan (“Plan”) memorializes ESCO’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”) (collectively, “M/W/DSBEs” which also includes firms designated as Disadvantaged Business Enterprises or “DBEs”¹) and an appropriately diverse workforce in connection with the Project.

This Project is subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, ESCO makes a legally binding commitment to abide by the provisions of this Plan which include ESCO’s commitment to exercise its best and good faith efforts throughout the Term to provide meaningful and representative contracting opportunities for M/W/DSBEs and to employ an appropriately diverse workforce which should include minority and female persons in all phases of the Project. By submission of this Plan, ESCO agrees that it shall and shall cause all its Subcontractors, professional services providers and consultants retained by ESCO (collectively, the "Participants" and each a "Participant") to use their best and good faith efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the Project. This Plan expressly applies to all subcontracts awarded by ESCO and subcontracts awarded by its Participants. The objectives set forth in this Plan shall be incorporated in all requests for proposals and solicitations and communicated to all Participant levels.

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 agency² or identified in the OEO Registry will be eligible to receive credit as a Participant. 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. If a firm is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

C. Neither ESCO nor any Participant shall discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to this Project.

¹ “DBE” or “Disadvantaged Business Enterprise” means a socially and economically disadvantaged minority or woman owned business that is certified under 49 C.F.R. Part 26. If ESCO makes solicitation(s) and commitment(s) with a DBE, ESCO shall indicate which category, MBE or WBE, is submitted for counting.

² A list of “OEO approved certifying agencies” can be found at www.phila.gov/oEO.

D. For this Plan, the term “Best and Good Faith Efforts,” the sufficiency of which shall be in the sole determination of the City, means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and achieve an appropriately diverse workforce. Best and Good Faith Efforts are rebuttably presumed met, when a ESCO makes commitments within the M/W/DSBE Participation Ranges established for this Contract and commits to employ a diverse workforce.

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

II. Goals

M/W/DSBE Participation Ranges

As a benchmark for the ESCO’s expression of its 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. 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.

Table 1

PROJECT PHASE	MBE	WBE
Audit Period ³	10% to 20% and/or	10% to 20%
Implementation Period ⁴	20% to 25%	0%
Guarantee Period	0%	0%

³ As of December 9, 2011, 19.1% of \$85,000 in expenditures for this phase has been achieved with MBEs and WBEs for energy, weatherization and insulation site audit activities.

⁴ This Participation range is based on all costs incurred during the Implementation period of the project, including work completed on the control systems. The control system installation will involve the extension of existing controls infrastructure. The installing contractor for the controls systems required by this work must be trained and certified to install compatible system components so as not to affect existing equipment warranties. At the time the Investment Grade Audit was completed, the ESCO searched using their Best and Good Faith efforts, but was not able to identify any M/W/DSBE Subcontractors who were certified to install these systems.

Employment Goals

ESCO agrees to exhaust its Best and Good Faith Efforts to employ an appropriately diverse workforce which includes minority persons and females at all tiers of employment and management. ESCO shall also cause its Participants to employ an appropriately diverse workforce. For this Plan, an appropriately diverse workforce is one which reflects the local availability of professionals possessing the requisite education, licenses, where appropriate, and skills to work on this project.

Table 2

PROJECT PHASE	Minority	Female
Apprentices	50%	7%
Journeypersons	30% to 35%	5% to 10%

ESCO shall use its Best and Good Faith Efforts to employ a workforce that has up to 50% City Residents in all phases of the Project.

III. ESCO Responsiveness and Responsibility

A. ESCO has identified all its M/W/DSBE commitments and evidence its agreement to employ a diverse workforce on the form entitled, “M/W/DSBE Participation and Workforce Commitments.” ESCO’s identified commitment to use an M/W/DSBE on this form constitutes a representation by ESCO, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that ESCO or its subcontractors has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by ESCO further represents that if ESCO is awarded the contract, ESCO will subcontract with the listed firm(s) 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, ESCO 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. ESCO is to maintain the M/W/DSBE percentage commitments throughout the Term of the Contract which shall apply to the Contract Sum and any additional increases. In the event ESCO’s contract is increased by change order and/or modification, or amendment, it shall be the responsibility of ESCO to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the Contract Sum of the Contract at the time of execution.

1. Commercially Acceptable Function

Where ESCO enters into a subcontract with a M/W/DSBE, ESCO 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 acceptable function (“CAF”). A M/W/DSBE is

considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with the Project), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved; M/W/DSBE subcontractors must perform at least twenty percent (20%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit ESCO receives towards the participation ranges.

Upon award, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of the Contract. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the Term of the Contract and shall apply to the Contract Sum (including approved change orders and amendments). 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, ESCO is required to continue its Best and Good Faith Efforts.

B. In the event ESCO does not identify on the M/W/DSBE Participation and Workforce Commitments Form that it has made M/W/DSBE commitments within the participation ranges established for this Project and/or does not agree to employ a diverse workforce as described herein, ESCO must complete and submit a Documentation of Best and Good Faith Efforts Form (“BGFE Form”), documenting its solicitations and any commitments with M/W/DSBEs, and detailing any efforts made to include M/W/DSBEs in the Contract and to employ a diverse workforce. The submission of the BGFE Form is an element of proposal responsiveness and failure to include this form may result in the rejection of the Proposal. The BGFE Form must include at a minimum, certification and documentary evidence that the following actions were taken:

1. Solicitation directed to both qualified M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. ESCO must provide a list of all certification directories used for soliciting participation for this Project. ESCO 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. ESCO provided interested M/W/DSBEs with adequate information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation; and
3. ESCO negotiated in good faith with interested M/W/DSBEs. ESCO 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; and

4. Documentation of the following:

- i. Any commitments to use M/W/DSBEs in its proposal for subcontracted services and materials supply even when ESCO would otherwise prefer to self-perform/supply these items; and
- ii. Correspondence between the ESCO and any M/W/DSBE(s) related to this Proposal; and
- iii. Attendance logs and/or records of any scheduled pre-proposal meeting; and

5. Certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

- i. Any arms-length business assistance provided to interested M/W/DSBEs; and
- ii. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/DSBEs and/or focus on M/W/DSBEs; and
- iii. Telephone logs of communications related to this Project; and
- iv. Notification of and access to proposal documents at the ESCO's office or other office locations for open and timely review; and
- v. ESCO sought assistance from the Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation to perform employment outreach; and
- vi. ESCO published its policy of nondiscrimination in the hiring, retention and promotion of employees; and
- vii. Any agreement with a training program that targets the employment of minority persons, disabled persons and women.

IV. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the ESCO's Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the Contract which may result in ESCO's amendment of its M/W/DSBE Participation and Workforce Commitments Form or BGFE Form.

B. Administrative Reconsideration

1. If the OEO determines that ESCO has not made sufficient Best and Good Faith Efforts, ESCO will be notified that its proposal is nonresponsive and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that ESCO did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

V. Compliance and Monitoring of Best and Good Faith Efforts

A. ESCO 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. ESCO 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:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/DSBE commitments.

B. ESCO shall ensure that all of 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. ESCO shall within five (5) business days after receipt of a payment from the City for work performed under the Contract, deliver to its M/W/DSBE subcontractors their proportionate share of such payment for work performed (including the supply of materials).

2. In connection with payment of its M/W/DSBE subcontractors, ESCO agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

3. Each month of the Term and by or before the Acceptance Date, ESCO shall provide to the OEO documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented in the Plan.

D. Oversight Committee

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the ESCO's company, representatives of the building trades, the construction manager and the City which may include the Project site's

District Councilperson, OEO and appropriate community organizations (“Committee”). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.

2. If a Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after issuance of the Notice To Proceed.

VI. Remedies and Penalties for Non-Compliance

A. ESCO 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 ESCO hereunder has failed to comply with these requirements, the City may, in addition to remedies reserved under Section 17-1605 of The Philadelphia Code, and 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:

- a. Withhold payment(s) or any part thereof until corrective action is taken.
- b. Terminate the ESCO’s Contract, in whole or in part.
- c. Suspend/Debar ESCO from proposing on and/or participating in any future City contracts for a period of up to three (3) years.
- d. Recover as liquidated damages, one percent of the total dollar amount of the Contract, as it may be amended from time to time, for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: For the purpose of assessing any liquidated damages, the “total dollar amount of the contract” shall exclude ESCO’s proprietary systems valued at \$7.1 Million, and the term “commitment” shall refer to M/W/DSBE Participation Ranges Table 1 of this Exhibit IV.)

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 Project 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 Project. 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 this Project 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.

(See Next Page for Signatures)

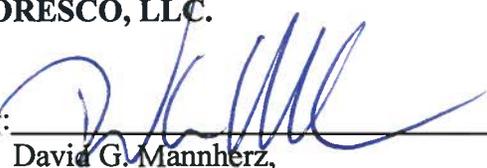
Philadelphia Municipal Authority

DATE: _____

By: _____

NORESCO, LLC.

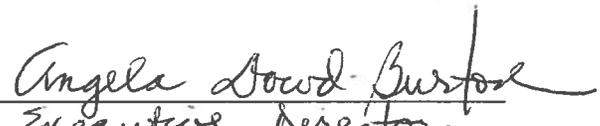
DATE: 2/7/12

By: 

David G. Mannherz,
Executive Vice President

Office of Economic Opportunity

DATE: 2/8/2012

By: 

Title: Executive Director

Office of Economic Opportunity.

Appendix A
OEO Certification for Subcontractors