

Appendix B

ECONOMIC OPPORTUNITY PLAN

THE CITY OF PHILADELPHIA YOUTH CENTER

**Bid No(s) 4519GCON, 4519MECH, 4519PLUM, 4519ELEC
Project No. 22-05-4519-01**

I. Introduction and Definitions

A. Executive Orders 02-05 and 14-08 establish an antidiscrimination policy relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprises (collectively referred to hereafter as M/W/DSBEs) in City Contracts (the "Antidiscrimination Policy"). The purpose of the Antidiscrimination Policy is to provide equal opportunity for all businesses and to assure that City funds are not used directly or indirectly, to promote, reinforce or perpetuate discriminatory practices.

In support of the City's Antidiscrimination Policy, 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 M/W/DSBEs in contracts and covered projects and identifies the successful Bidder's outreach and hiring activities for employing an appropriately diverse building trades workforce in connection with the contract or covered project.

This Invitation To Bid and resulting Project is subject to the Plan requirements as described in Section 17-1603 (2). Accordingly, by submission of its Bid, a responsible Bidder makes a legally binding commitment to abide by the provisions of this Plan which include Bidder's commitment to exercise its best and good faith efforts throughout the contract term to provide meaningful and representative contracting opportunities for M/W/DSBEs and to employ an appropriately diverse workforce of tradespeople including minority and female persons and residents of the West Philadelphia Project area in all phases of the contract awarded under this Bid.

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.

B. For the purposes of this Plan, MBE, WBE and DSBE shall refer to businesses so certified by the City of Philadelphia through its Office of Economic Opportunity ("OEO"). The term "minority person" shall refer to the following federal Equal Employment Opportunity reporting categories: Blacks (Black African racial groups), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race). The term "disabled person" shall mean a person who has a physical or mental impairment that substantially limits one or more of his or her major life activities. 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, as evaluated by the City, the scope, intensity and appropriateness of which are designed and performed to achieve meaningful business opportunities for M/W/DSBEs and building trades employment opportunities for minority persons and females including residents of the West Philadelphia Project area. The following are examples of Best and Good Faith Efforts:

- Bidder seeks assistance from the Philadelphia area building trades and the Diversity Apprenticeship Program to conduct employment outreach and identify minority and female apprentices and journeypersons, including those persons identified as West Philadelphia Project area residents.
- Bidder adheres to a published policy of nondiscrimination in the hiring, retention and promotion of employees which includes communication of that policy to Bidder's project forepersons with follow-up for accountability.
- Bidder sponsors minority or female apprentices or otherwise demonstrates support of pre-apprentice, apprenticeship or training program(s) that target the employment of minority persons and women.
- Bidder makes commitments to use MBEs, WBEs and DSBEs in its bid for commercially acceptable subcontracted services and materials supply even when the Bidder might otherwise prefer to perform/supply these items without subcontracting.
- Bidder timely solicits through all reasonable and available means the interest of OEO certified businesses who have the capability to perform the work of the Bid. Such efforts include use of the OEO Directory of Certified Firms, attendance at pre-bid meetings, advertising in minority focused publications, written mailings to certified M/W/DSBEs. The Bidder must determine with certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without any follow up, is not acceptable.
- Bidder provides interested MBEs, WBEs and DSBEs, prior to the date of bid submission, with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation. Assistance may include estimating support.
- Bidder provides arms length business assistance to interested M/W/DSBEs which may include access or introduction to major manufacturer/suppliers, lines of credit and union halls.

- Bidder negotiates 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 Chapter 17-1600 into consideration.

II. Economic Opportunity Plan Commitments

A. M/W/DSBE Participation

1. Participation Ranges

As a benchmark for the Bidder'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. 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 this contract through the exercise of Bidder's best and good faith efforts. 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
4519GCON	15%-20%	10%-15%	2%-5%
4519MECH	10%-15%	5%-10%	0%
4519PLUM	10%-15%	2%-5%	0%
4519ELEC	12%-15%	6%-10%	2%-5%

a. Documentation of Best and Good Faith Efforts

Bidder shall respond to the Participation Ranges by completing the **Documentation of Best and Good Faith Efforts Form ("BGFE Form")** in Section VI, documenting its solicitations and commitments with M/W/DSBEs, and detailing its exercise of best and good faith efforts to include M/W/DSBEs in the contract. The submission of the BGFE Form is an element of

(1) The BGFE Form must include the company name, address, contact person, telephone number, facsimile number and OEO certification number of each M/W/DSBE firm solicited for participation under this Bid (regardless of the response by the firm), a detailed description of the services or the supply effort solicited/quoted and the dollar amount and percentage of contract commitments made to M/W/DSBE firms. Bidder should avoid using one-word descriptions of the services or supply effort and is required to submit copies of the supporting quotation(s) or letter(s) of intent. If no commitments were made, or if quotes were not received from M/W/DSBE firms solicited by the Bidder, Bidder must provide an explanation. Only firms that are certified by the OEO at the time of bid opening will receive credit as a Best and Good Faith Effort. A list of currently certified firms is maintained by the OEO and is available online at www.phila.gov/mbec/directory or in printed format at the OEO offices, located in the Municipal Services Building, 1401 JFK Blvd. Suite 330, Philadelphia, PA. 19102-1666.

(2) The Bidder's identified commitment to use an M/W/DSBE on the BGFE 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. The listing of the M/W/DSBE firm by Bidder further represents that if Bidder is awarded the contract, Bidder will subcontract with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the BGFE Form. Bidder is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the contract and any additional increases. In the event the Successful Bidder's contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Successful Bidder to apply its Best and Good Faith Efforts to the amended amount in order to maintain any participation ranges committed to on the total dollar amount of the contract at the time of contract completion.

(3) 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 the M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An 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 Bid specifications), 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. 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 the Bidder receives towards the participation ranges. For example, a Bidder using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character described by the Bid specifications and required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

(4) 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 BGFE Form, the percentage will govern.

(5) Upon award, the letters of intent, quotations and any other accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs, including the BGFE Form, become part of the contract. M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to substitutions for the listed firms, changes or reductions in the work and/or 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.

B. Employment of a Diverse Workforce

1. Employment Benchmarks and Outreach

The Project resulting from this Invitation and Bid is subject to a Partnership Agreement with The Building and Construction Trades Council of Philadelphia which incorporates, by reference, this Plan. Bidder agrees to exhaust its Best and Good Faith Efforts to employ minority persons and females in its workforce of apprentices and journeymen which shall include West Philadelphia Project area residents. West Philadelphia Project area resident shall mean permanent residents of the following postal zip codes: 19131, 19151, 19139, 19104, and 19143. As evidence of its Best and Good Faith Efforts, Bidder shall establish and maintain a current list of minority and female recruitment sources and provide written notification to these recruitment sources, to community organizations and the trades unions when Bidder has employment opportunities available; Bidder shall maintain a record of the organizations' responses. Bidder agrees to work with the Diversity Apprenticeship Program and similar programs to identify pre-apprentices for Bidder's referral to trades unions. Bidder is encouraged to sponsor minority and female apprentices. Bidder also agrees to work with representatives of trades unions to create apprenticeship opportunities for West Philadelphia Project area residents. Bidder is obligated to exhaust its Best and Good Faith Efforts to employ:

Minority Apprentices – 40% of all hours worked by all apprentices
Minority Journeymen – 40% of all journey hours worked across all trades
Female Apprentices – 5% of all hours worked by all apprentices
Female Journeypersons - 5% of all hours worked across all trades

Bidder agrees that when a union with which Bidder has a collective bargaining agreement has impeded Bidder's efforts to meet its obligations hereunder, Bidder shall immediately refer this information to the City Official designated in the contract.

2. Training

If Bidder operates on-the-job training programs and/or participates/funds union administered training programs, Bidder is required to expressly include opportunities for minority persons, females and West Philadelphia Project area residents to participate in such programs, including apprenticeship and trainee programs relevant to Bidder's employment needs.

III. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the Bidder'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 Bidder's amendment to its BGFE Form.
2. Best and Good Faith Efforts will be evaluated on the basis of Bidder's BGFE Form and any other information requested from Bidder by the City.

B. Administrative Reconsideration

1. If the OEO determines that the apparent low Bidder has not made sufficient Best and Good Faith Efforts, the Bidder will be notified 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 OEO's decision to the Director of Neighborhood and Business Services or his designee whose decision shall be final. If it is determined that the apparent low Bidder did not make sufficient Best and Good Faith Efforts, its Bid will be rejected.
2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all bids as deemed in the best interest of the City.

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:

- 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. The Successful Bidder shall ensure that all its on-site contractors submit 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 the contract, 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 BGFE Form.

D. Oversight Committee

1. For this project, the City, in its sole discretion, will establish a Project Oversight Committee consisting of representatives from the Bidder's company, representatives of the building trades, the construction manager, the City including the Project site's District Councilperson, Capital Program Office and OEO, and appropriate community organizations ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.
2. The City will convene meetings of the Project Oversight Committee no later than one (1) month after issuance of the Notice To Proceed.

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

bond filed in connection therewith or at law or in equity, exercise one or more of the remedies discussed below, as deemed applicable, which shall be deemed cumulative and concurrent:

- a. Withhold payment(s) or any part thereof until corrective action is taken.
- b. Terminate the contract, in whole or in part.
- c. Suspend the successful bidder from bidding 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 for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City.)

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.

VI. Documentation of Best and Good Faith Efforts [See Forms following on pages 10 – 12; these Forms, as completed by Bidder, must be submitted with the Bid as a matter of Responsiveness and Responsibility]