

**APPENDIX 7**

**City of Philadelphia  
Office of Economic Opportunity (OEO)  
Mayor’s Executive Order 02-05**

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**INSTRUCTIONS, FORMS AND CONTRACT PROVISIONS FOR THE PARTICIPATION OF  
MINORITY, WOMAN AND DISABLED  
OWNED BUSINESS ENTERPRISES (M/W/DSBEs)  
in City Contracts**

The Concession Agreement is subject to the **Mayor’s Executive Order 02-05**. The following instructions, forms and contract provisions, as well as Executive Order 02-05 (a copy of which may be obtained at the OEO Office) are hereby incorporated in and made a part of any contract resulting from the RFP.

Respondent is subject to the provisions of Mayoral Executive Order 02-05 and is required to respond to the requirements specified in the RFP for participation by Minority Business Enterprises (“MBE”), Woman Business Enterprises (“WBE”) and Disabled Business Enterprises DSBEs (collectively, (“M/W/DSBEs”) as those terms are defined in Executive Order 02-05.

Respondent shall submit a **“Solicitation for Participation and Commitment Form” (S & C Form)** identifying its solicitations and any commitments made with M/W/DSBEs to participate in the contract. Respondent is also required to submit documentation of its “Good Faith Efforts” (as more fully described below), whether or not it has achieved any commitments with M/W/DSBEs.

This information, the S&C Form identifying Respondent’s solicitations and commitments of M/W/DSBEs and documentation of Respondents’ Good Faith Efforts, must be submitted with the Proposal, although the OEO reserves the right to request these documents as well as any additional or clarifying information at any time prior to contract award. The submission of this information is an element of responsiveness to the RFP and failure to do so may result in the rejection of the Respondent. Respondent hereby verifies that all forms, information and documentation submitted to the OEO are true and correct and is notified that the submission of false information by the Respondent is subject to the penalties of 18 Pa. C. S. Section 4904 relating to unsworn falsification to authorities.

**M/W/DSBE PARTICIPATION**

<b>MBE RANGES</b>	<b><u>5% TO 10%</u></b>
<b><u>AND/OR</u></b>	
<b>WBE RANGES</b>	<b><u>5% TO 10%</u></b>
<b>DSBE RANGES</b>	<b><u>BEST EFFORTS</u></b>

Under the authority of the Mayor's Executive Order 02-05, in addition to participation ranges, the RFP is subject to Good Faith Efforts for the inclusion of MBEs, WBEs and DSBEs in the contract. "Good Faith Efforts" are those efforts, the scope, intensity and appropriateness of which would reasonably be expected to achieve meaningful M/W/DSBE participation in the contract. 'Good Faith Efforts' include but are not limited to:

- Efforts made to solicit through all reasonable and available means the interest of OEO-certified businesses that have the capability to perform the work detailed in the RFP. Such efforts include use of the OEO Directory of Certified Firms, attendance at the Pre-Proposal Meeting, advertising in minority focused publications, written mailings to certified M/W/DSBEs. Respondents should determine with certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations.
- Efforts made to allocate a portion of the services to an MBE, WBE, and/or DSBE even when Respondent might otherwise prefer to perform these services with its own forces. The OEO may consider for approval a joint venture arrangement between Respondent and a M/W/DSBE for performance of the contract. Any such joint venture arrangements must identify the M/W/DSBEs division of work and its share in risk and profits; these arrangements shall be memorialized in writing and are subject to the OEO's approval.
- Evidence that Respondent has provided interested MBEs, WBEs and DSBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner and to assist them in responding to a solicitation.
- Efforts to assist interested M/W/DSBEs in obtaining any necessary licensure, obtaining lines of credit, manufacturer training, and access to major suppliers, necessary equipment, materials, or related assistance or services required for the performance of the services.
- Efforts made to negotiate in good faith with interested M/W/DSBEs. A Respondent 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 City's Antidiscrimination Policy into consideration.
- Efforts to provide an appropriate balance of both certified MBEs, WBEs and DSBEs in the project.

**A. Solicitation for Participation and Commitment.**

1. The Solicitation for Participation and Commitment Form ("S & C Form") shall contain:

- The company name, address, contact name, telephone number, fax number and OEO certification number of each MBE, WBE and DSBE solicited for participation in the contract, regardless of whether commitments resulted from this solicitation. If Respondent receives unsolicited quotations from a MBE(s), WBE(s) or DSBEs or if Respondent makes solicitations of MBE(s), WBE(s) or DSBEs but receives no quotations, these MBE(s), WBE(s) or DSBEs must also be identified on the S & C Form.
- A detailed description of the services/supply effort that was solicited and a quotation received for each MBE, WBE or DSBE. This description shall include the services or the supply effort solicited/quoted, describing such service or supply effort as it relates to a distinct element of the contract as determined by the Respondent. Respondents should avoid utilizing one-word descriptions of the services to be performed or the material to be supplied and should provide a detailed description.
- Disclosure of any second tier subcontracts. If the listed MBE, WBE or DSBE subcontractor with whom the Respondent has a commitment, intends to subcontract more than ten percent (10%) of the described work (not including the cost of materials, equipment or supplies incident to the performance of services under the contract), Respondent must provide, on a duplicate copy of the S & C Form, the name and address of each second tier subcontractor(s) (identifying whether it is or is not a MBE, WBE or DSBE), a detailed description of the services, and dollar amount of the subcontracted services.
- The dollar amount and percentage of commitment made reflected by the quotation provided to the Respondent by each identified MBE, WBE and/or DSBE.
- The reason(s) if no commitment is made or no quote is received from each identified MBE, WBE and/or DSBE.

Upon completion of the **S & C Form(s)**, Respondent should indicate at the bottom of each form the total percentage commitment made to the type of business.

## **B. Documentation of Good Faith Efforts**

1. Respondent must document its Good Faith Efforts by submitting a brief narrative, on its company's letterhead, documenting all of Respondent's efforts made to solicit M/W/DSBE participation in the contract. The narrative shall contain and discuss, at a minimum, the following:
  - If no commitment resulted from Respondent's solicitation(s), please explain what good faith efforts were made and why they were unsuccessful. Explain what type of service or supply effort Respondent made solicitations

for.

- Did Respondent attempt to negotiate price and scope with any interested M/W/DSBEs (please be specific, attaching any dated price quotations and correspondence)?
- Did Respondent offer any business assistance to M/W/DSBEs (e.g., introduction to manufacturer, helped provide access to line of credit, etc.)?
- Were efforts made to provide to M/W/DSBEs information about the scope of work required?
- Is Respondent awarding/subcontracting any work or supply effort in connection with the contract to a non-M/W/DSBE? If so, please explain why. Identify the name of the awarded firm(s), provide the awarded firms' quotation and any price adjusted quotations, scope of work and experience of the awarded firm(s).

### **C. Evaluation of Good Faith Efforts**

OEO will review Respondent's submission and any other evidence OEO deems relevant to its evaluation to determine whether Respondent made adequate good faith efforts to include M/W/DSBEs in contracting opportunities associated with the contract. OEO will make a recommendation to the Executive Director or President of the Conservancy or his/her designee. If the Executive Director or President of the Conservancy or his/her designee, after review of the OEO's recommendation and supporting documentation, concurs that Respondent did not make good faith efforts, Respondent will be deemed not responsible and its Proposal rejected.

### **GENERAL PROVISIONS**

1. Any M/W/DSBE that is listed on the S & C Form or the Joint Venture Eligibility Information Form must be certified by the OEO in accordance with Executive Order 02-05 in order to receive consideration towards Respondent's Good Faith Efforts.
2. M/W/DSBE subcontractor(s) must perform a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work that provides for a distinct element of the subcontract (as required by the services to be performed in accordance with the RFP). The distinct element is worthy of the dollar amount of the subcontract value and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved. The OEO 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. If it is determined during the review of the S & C Form that the work described on the form does not constitute

a CAF, the participation will not be considered in the evaluation of the Respondent's good faith efforts.

3. Listing of an M/W/DSBE as a subcontractor on the S & C Form, constitutes a representation by Respondent, that such M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Respondent has made a binding commitment with the firm prior to the submission of the S & C Form. This listing is also a representation by Respondent that if awarded the contract, Respondent will subcontract with the listed firm(s) for the work described and dollar/percentage amount(s) set forth on the S & C Form, unless the Conservancy alters the scope of services prior to the commencement of the contract. M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total dollar amount of the contract and any additional increases.
4. If a joint venture arrangement has been entered into with a MBE, WBE or DSBE, the following criteria must be met:
  - The MBE, WBE or DSBE partner(s) must be certified by the OEO;
  - The MBE, WBE or DSBE partner(s) must derive substantial benefit from the arrangement;
  - The MBE, WBE or DSBE partner(s) must be substantially involved in all phases of the contract including, but not limited to, the performance, with its own workforce, of a portion of the on-site work where appropriate, and administrative responsibilities such as proposing, planning, staffing and daily management;
  - The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interests, contributes working capital and other resources, etc).

If Respondent has entered into a joint venture arrangement, the joint venture partners must complete and submit a "Joint Venture Eligibility Information Form" (available at the OEO Office). This form should be submitted with the Proposal and the form will be reviewed by the OEO for approval or disapproval of the joint venture arrangement. If the joint venture arrangement is not approved by the OEO, the arrangement will not be considered in the evaluation of the Respondent's good faith efforts.

5. In calculating the percentage of participation by a M/W/DSBE, Respondent shall apply the standard mathematical rules in rounding off numbers. In the event of an inconsistency between the dollar and percentage amounts listed on the S & C Form, the percentage will govern.

6. 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, MBE and DSBE or WBE and DSBE), will only be credited in one category i.e., either as a Minority (MBE), Woman (WBE) or Disabled (DSBE) Business Enterprise; Respondents will designate on the **S & C Form** which category, MBE, WBE or DSBE, is submitted for consideration.
7. Certification of a business by the OEO shall not be a representation of the firm's financial or technical ability to perform specified work. The Conservancy reserves the right to evaluate a firm's ability to satisfy financial, technical or other criteria separate and apart from certification before or after selection of the successful Respondent or award of the contract.
8. If Respondent is a certified M/W/DSBE submitting a RFP as a prime, Respondent must still respond to the OEO requirements specified in the RFP and demonstrate its Good Faith Efforts.
9. Except as otherwise provided herein, no changes or modifications to the participation arrangements specified on the **S & C Form** or Joint Venture Eligibility Information Form, including but not limited to substitutions for the listed firms, changes or reductions in described work and/or listed dollar/percentage amounts, shall be permitted.
  - a) Following contract award, the successful Respondent may, under appropriate circumstances and with the prior written approval of the OEO, make changes or modifications to the participation arrangements contained in its original submission. Requests for such changes or modifications must be submitted to the OEO in writing with appropriate justification.
  - b) The OEO may from time to time request revised form(s) or other documentation from the successful Respondent to ensure satisfaction of Respondent's commitments.
10. In the event the scope of the successful Respondent's contract is increased by change order (sometimes referred to as a modification) and/or amendment, it shall be the responsibility of the successful Respondent to maintain the participation levels committed to on the increased scope of its contract.
11. The successful Respondent agrees to cooperate with the OEO in its compliance monitoring efforts and to submit, within the time limits prescribed by the OEO, all documentation which may be requested by the OEO, including but not limited to, copies of subcontracts with the M/W/DSBEs, invoices, telephone logs and correspondence with the M/W/DSBEs, canceled checks, etc. These documents shall be maintained by the successful Respondent for a period of three (3) years following acceptance of final payment under the contract. The successful Respondent also agrees to submit reports and other documentation to the OEO,

including reports through IMPACT, the City's electronic payment verification system, as deemed necessary by the OEO to ascertain the successful Respondent's fulfillment of its M/W/DSBE participation commitments.

12. It is understood and agreed that the successful Respondent's compliance with the requirements for M/W/DSBE participation is material to the contract. Any failure to comply with these requirements shall constitute a substantial breach of the contract. It is understood and agreed that if the Director of Neighborhood and Business Services or his designee determines that the successful Respondent hereunder has failed to comply with the requirements for M/W/DSBE participation, the Conservancy and the City may, in addition to any other rights and remedies the Conservancy and the City may have under the contract, any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:
- a) Terminate the contract, in whole or in part.
  - b) Suspend the successful Respondent from proposing on and/or participating in any future Conservancy or City contracts for a period of up to three (3) years.
  - c) Recover as liquidated damages, an amount equal to one percent of the total dollar amount of the Concession Fee for each one percent (or fraction thereof) of the shortfall toward the applicable M/W/DSBE commitment.

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*Should you have any questions related to the Contract Provisions, please contact Julie Simmons of the OEO staff at (215) 686-6390 or fax (215) 686- 3878.*

***Form A: Solicitation for Participation and Commitment Form***