

## **Equal Opportunity Procedures Policy (EOPP)**

### **Background**

Through the issuance of Executive Order 03-12 (the successor to Executive Order 02-05), the City of Philadelphia (“City”) established an Antidiscrimination Policy (“Antidiscrimination Policy”) to provide equal opportunity for any business to compete for City contracts and also assure that any contracts using public funds, sourced, administered, or authorized by the City are not used to promote, reinforce, or perpetuate discrimination. This policy, which is administered by the City through its Office of Economic Opportunity (“OEO”) was established to create a level playing field to increase the participation of minority, women, and disabled owned businesses (“M/W/DSBE”) as prime contractors, subcontractors or joint venture partners on all contracts awarded by the City.

Executive Order 03-12, which is attached to this document and incorporated herein, requires all City Contractors subject to the City’s Antidiscrimination Policy to be fully aware of the requirements relating to M/W/DSBE participation. All City Contractors make a legally binding commitment to abide by the provisions of Executive Order 03-12, as applicable, each time they submit a bid. Moreover, once a City contract is awarded, the Contractor also agrees to special contract provisions contained in the “Antidiscrimination Policy Forms, Instructions and Special Contract Provisions”, which place additional requirements on the Contractor in accordance with Executive Order 03-12.

### **Contractor’s Legal Obligation**

In order to provide meaningful and representative opportunities for M/W/DSBEs, Contractors are required to exercise “Best and Good Faith Efforts” throughout the contract term. The term “Best and Good Faith Efforts” means those efforts, as evaluated by OEO, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/W/DSBEs in a specific City Contract. The Contractor’s expressed desire to self-perform work with its own workforce, equipment and materials will not excuse the Contractor from its responsibility to exercise Best and Good Faith Efforts to include M/W/DSBEs in its contract.

Whether a Contractor has met this burden is the sole determination of the OEO. Best and Good Faith Efforts are presumably met when a Contractor makes commitments within the M/W/DSBE Participation Range established by the Bid. The “M/W/DSBE Participation Range” is a projection, expressed as a percentage, of the level of MBE, WBE and/or DSBE participation that should be attained from business opportunities existing in the available market absent discrimination in the solicitation and selection of M/W/DSBEs through Contractor’s exercise of Best and Good Faith Efforts.

## Steps to Document “Best and Good Faith Efforts”

The City will require the following steps to determine whether “Best and Good Faith Efforts” have been taken. These steps are meant to help Contractors understand what is expected of them and to document, for OEO’s review, that the Contractor actually made these efforts.

- (1) Contractors must use M/W/DSBEs that are certified by a City Office of Economic Opportunity (“OEO”) approved certifying agency at the time a Bid is submitted.

Only firms that are certified by an approved certifying agency and identified in the OEO Certification Registry by the time of contract award will be credited toward the participation ranges on City contracts. An OEO Certification Registry is maintained by the OEO and is available online at [www.phila.gov/OEO/directory](http://www.phila.gov/OEO/directory). Firms owned and controlled by minority persons, women or disabled persons, which are certified as a minority business entity (MBE), woman business entity (WBE), disabled business entity (DSBE), or disadvantaged business enterprise (DBE) by an approved certifying agency may apply to the OEO for listing in the OEO Certification Registry. Approved certifying agencies are identified on the OEO webpage found at [www.phila.gov/OEO](http://www.phila.gov/OEO). Contractors are strongly encouraged to search, in addition to the OEO Certification Registry, the Pennsylvania Unified Certification Program (“PaUCP”) Directory which also offers a robust listing of DBEs; the PaUCP Directory is found at [www.paucp.com](http://www.paucp.com).

Contractors should keep a copy of an OEO Certification Registry print-out on any sub-contracting M/W/DSBE on file, as well as a copy of the M/W/DSBE certification.

- (2) Contractors must meet the M/W/DSBE Participation Ranges, unless a reduction in participation or waiver is sought at the time of bid submission and the contractor documents its Best and Good Faith Efforts.

The M/W/DSBE Participation Ranges represent the percentage of MBE, WBE, or DSBE participation that is reasonably attainable on the City contract. The ranges are based upon the 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 project. Prime contractors with the City must meet the participation ranges; if the participation range cannot be met after making “Best and Good Faith Efforts,” the prime must seek a reduction of the participation range or waiver at the time of bid submission along with submission of documentation that the prime has exhausted Best and Good Faith Efforts.

- (3) M/W/DSBE Solicitation For Participation and Commitment forms submitted to the City must contain complete, accurate, and truthful information.

Contractors are required to submit M/W/DSBE Solicitation For Participation and Commitment forms (“S&C Form”) that identify all its M/W/DSBE solicitations and commitments. Contractors must document their solicitations, indicating if a quote is received, even if the solicitation did not result in a commitment to use the M/W/DSBE. Contractor must provide a detailed description of the work or supply effort solicited which may include notation of the relevant NAICS Code for that type of work. If a commitment is made, the Contractor’s identified commitment to use an M/W/DSBE on the S&C Form constitutes a representation by

the Contractor that the M/W/DSBE is *capable of completing the subcontract with its own workforce* and that the Contractor has made a legally binding commitment with the M/W/DSBE. Furthermore, *the listing of the M/W/DSBE on the S&C Form represents that, if the Contractor is awarded the project, the Contractor will subcontract with the listed M/W/DSBE(s) for the work or supply effort described at the dollar/percentage amount(s) set forth on the form.*

In its submissions to the City, Contractors must verify that all information submitted to the City, including the plan to contract with M/W/DSBEs, is true and correct. False certification or representation made in connection with Executive Order 03-12, or future Executive Orders directing M/W/DSBE participation, or the Contractor's S&C Forms, may subject the Contractor to local and federal prosecution and/or contractual remedies, which may include payment of fines, financial restitution, and/or a term of imprisonment.

(4) All M/W/DSBEs must provide a "Commercially Useful Function."

An M/W/DSBE is considered to perform a Commercially Useful Function when it performs a distinct element of a contract (as required by the scope of work to be performed in accordance with the bid specifications) which is worthy of the dollar amount of the M/W/DSBE's contract 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 contract with its own workforce. 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 is evaluated and determined by the OEO on a bid by bid basis. OEO, in making its determination of commercial usefulness, considers the prevailing industry standards and the M/W/DSBE's NAIC Codes, i.e., the areas of expertise that the M/W/DSBE is certified in. OEO may also require that an M/W/DSBE supplier show evidence of a warehouse and distribution equipment.

(5) Contractors must be able to provide evidence of all legally binding agreements with M/W/DSBEs.

As required by the City's contract terms, a Contractor who has commitments with M/W/DSBEs must enter into a written, legally binding contract with those M/W/DSBEs.

(6) Contractors must cooperate with the City in its compliance monitoring efforts and submit, within the time limits prescribed by the City, all documentation requested by the City relative to the awarded contract.

As required by the City's contract terms, a Contractor must also maintain contract documentation of its commitments with M/W/DSBEs for a minimum period of five (5) years from the date of the Contractor's receipt of final payment under the contract. The City may request documents including, but not limited to, copies of subcontract(s) with M/W/DSBEs, participation summary reports, M/W/DSBE subcontractor invoices, telephone logs and correspondence with M/W/DSBE subcontractors, cancelled checks, and certification of payments.

(7) Contractors must ensure prompt payment of M/W/DSBEs.

Unless specified in a legally binding agreement, a Contractor must deliver to its M/W/DSBE subcontractor its proportionate share of payment for work performed within five (5) business days after receipt of payment from the City for work performed under the contract. In some cases, a Contractor is also required to provide to the City documentation reconciling actual dollar amounts paid to M/W/DSBE subcontractors to M/W/DSBE commitments presented on the Contractor's S&C Form provided to the City.

Again, false certification or representation made in connection with these reconciliations may be subject to local and federal prosecution and/or contractual remedies.

### **Exception for Non-Profit Corporations**

Although City Contracts with nonprofit organizations are not generally subject to the City's M/W/DSBE Participation Ranges, if the Contractor is a non-profit corporation, it shall demonstrate its compliance with Executive Order 03-12 when requested by OEO in the following manner:

- (1) Identify the race, gender, and ethnic composition of its workforce and its board of directors, list the non-profit's five (5) highest dollar value M/W/DSBE suppliers of products and services; and,
- (2) Provide the non-profit's written equal opportunity statement as an assurance of the non-profit's efforts to maintain a diverse workforce and board of directors and operation of a fair and effective supplier diversity program.

### **Remedies for Non-Compliance**

Any failure to comply with the requirements enumerated in Executive Order 03-12, directing M/W/DSBE participation, or contained in the contract between the City and the Contractor may constitute a substantial breach of contract. The City retains the right to exercise one or more of the remedies below:

- Debar Contractor from bidding on and/or participating in any future contracts for a maximum period of three (3) years.
- 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 which amount shall be collected and considered not as a penalty but as liquidated damages for the Contractor's failure to comply with the contract.

In addition to pursuing the contractual remedies listed above, the City may also notify local, state, or federal prosecutors of any fraudulent or criminal activities.

**Questions about the City's Antidiscrimination Policy**

Contractors who have questions about compliance with the City's Antidiscrimination Policy may contact OEO. The telephone number for OEO is 215-683-2000. OEO's website also has a questionnaire form available at <http://o eo.phila.gov/questions.asp>.

**Certification**

I, the undersigned, hereby certify that I have read this Agreement and Executive Order 03-12 and understand what is necessary to be in compliance with the City's Antidiscrimination Policy. I am aware that I may contact the Office of Economic Opportunity should I, or another representative from my business, have any questions or concerns about the City's Antidiscrimination Policy. In all current and future contracts with the City, I will ensure that my business exercises Best and Good Faith Efforts as described in this EOPP to provide meaningful and representative contracting opportunities for minority, women, and disabled owned business enterprises.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Position/Title

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Date