

## Attachment D

City of Philadelphia  
Economic Opportunity Plan

### Renewable Energy Power Purchasing

#### Introduction, Definitions and Diversity Practices

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. This Economic Opportunity Plan (“Plan”) memorializes the Proposer’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”<sup>1</sup>) and employ an appropriately diverse workforce in business opportunities resulting from this Request for Proposals for the supply of renewable energy under a long-term power purchase agreement (“project”). The term “Best and Good Faith Efforts,” the sufficiency of which shall be in the sole determination of the City, means: a Proposer’s 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 an appropriately diverse workforce and to achieve the objectives of Chapter 17-1600 within this project. Best and Good Faith Efforts are rebuttably presumed met, when a Proposer makes commitments and causes its second tier providers retained by Proposer (collectively, the “Participants” and each a “Participant”) to make commitments with M/W/DSBEs and employ a diverse workforce as enumerated herein.

This contract is subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, by submission of this Plan, a responsive and responsible Proposer makes a legally binding commitment to abide by the provisions of this Plan which include its commitment to exercise its Best and Good Faith Efforts throughout the project and its commitment to cause its Participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the project and to employ a diverse workforce. This Plan expressly applies to all contracts awarded in connection with the project. The objectives set forth in this Plan shall be incorporated in all Proposer’s requests for proposals, bids 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 agency<sup>2</sup> or identified in the OEO Registry 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](http://www.phila.gov/oEO/directory). If Proposer is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

C. Proposer is required to submit a statement summarizing current and past practices relating to its diversity practices (“Diversity Practices Statement”). This statement shall identify and describe examples of processes used to develop diversity at all levels of Proposer’s organization including, but not limited

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<sup>1</sup> “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 applicant makes solicitation(s) and commitment(s) with a DBE, applicant shall indicate which category, MBE or WBE, is submitted for counting.

<sup>2</sup>A list of “OEO approved certifying agencies” can be found at [www.phila.gov/oEO](http://www.phila.gov/oEO)

to, board and managerial positions. This Diversity Practices Statement should also summarize Proposer's strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities including any M/W/DSBE utilization on the project development, construction, operations and maintenance of the renewable energy power plants if they are already built. Provide M/W/DSBE utilization for projects identified in the RFP Section, "Project History and Client References, 4.3.1(c) 2.F Appendix "A" to this Plan is provided for this purpose and should be submitted with the proposal although the City reserves the right to request it at any time prior to contract award.

D. Proposer also agrees to identify in this Plan, any "Equity Ownership" which shall mean the percentage of beneficial ownership in the Proposer's firm or development team that is held by minority persons, women and disabled persons. In the event Equity Ownership is identified, Proposer agrees to abide by the reporting requirements enumerated in Section 17-1603 (1)(g)(.3).

E. Proposer 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. Proposer and its Participants also acknowledge that if awarded a contract/subcontract resulting from this RFP, 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, Proposer and/or its Participant(s) fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

## Goals

### A. M/W/DSBE Participation

The citywide goal of 35% M/W/DSBE participation should be used as a benchmark for the Proposer's expression of Best and Good Faith Efforts. Best and Good Faith Efforts are Proposer's efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract. In consideration of the stated need for renewable energy sources, the availability of M/W/DSBEs and this citywide goal of 35%, Proposer shall make solicitations of and commitments with M/W/DSBEs in furtherance of the objectives stated herein. Proposer is encouraged to provide any alternative methods for incorporating M/W/DSBE business participation as well as M/WBE workforce and/or local Philadelphia workforce in the project development, construction (if necessary) and operations. The City acknowledges that prior to the final execution of the contract, Proposer may need to make updates to this Plan. The final Plan, which is subject to the prior review and approval of OEO, will include the M/W/DSBE Participation and Workforce Commitments form which will be incorporated by reference into the contract.

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 once as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category but a Best and Good Faith Effort will demonstrate commitments with both MBEs and WBEs.

## B. Workforce Diversity Goals and Requirements

Proposer and its Participants, in any construction activities associated with this project, agree to exhaust their Best and Good Faith Efforts to employ minority persons, by race and ethnicity, and females in its workforce of apprentices and journeypersons at the following levels<sup>3</sup>:

African American Journeypersons – 22% of all journey hours worked across all trades

Asian Journeypersons – 3% of all journey hours worked across all trades

Hispanic Journeypersons – 15% of all journey hours worked across all trades

Female Journeypersons – 5% of all journey hours worked across all trades

Minority Apprentices – 50% of all hours worked by all apprentices

Female Apprentices – 5% of all hours worked by all apprentices

## III. Proposer Responsiveness and Responsibility

A. Proposer shall identify 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.” The Proposer’s identified commitment to use an M/W/DSBE on this form constitutes a representation by Proposer that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Proposer has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Proposer in its final Plan represents that Proposer 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, Proposer 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. Proposer is to maintain the M/W/DSBE percentage commitments throughout the term of the contract which shall apply to the total amount of the annual spend.

### 1. Commercially Acceptable Function

A Proposer 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 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), 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/DSBEs 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 the Proposer receives towards the participation ranges. For example, a Proposer 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 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.

B. 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

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<sup>3</sup> These goals have been informed by the City of Philadelphia Fiscal Year 2015 Annual Disparity Study, Economic Opportunity Plan Employment Composition Analysis.

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. **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, Proposer is required to continue its Best and Good Faith Efforts.

C. In the event Proposer 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 Contract and/or does not agree to employ a diverse workforce as described herein, Proposer 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. Proposer must provide a list of all certification directories used for soliciting participation for this Contract. Proposer 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. Proposer 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. Proposer negotiated in good faith with interested M/W/DSBEs. An Proposer 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 Proposer would otherwise prefer to self-perform/supply these items; and

ii. Correspondence between the Proposer 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 Contract; and

iv. Notification of and access to proposal documents at the Utility Supplier's office or other office locations for open and timely review; and

v. Proposer sought assistance from the Urban Affairs Coalition, PACareerlink, Opportunity Industrial Center and Philadelphia Works, Inc. to perform employment outreach; and

vi. Proposer 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 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 Proposer's amendment of its M/W/DSBE Participation and Workforce Commitments Form or BGFE Form.

##### B. Administrative Reconsideration

1. If the OEO determines that the Proposer has not made sufficient Best and Good Faith Efforts, the Proposer 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 the Proposer 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. The Proposer shall file a hard copy of this Plan, as certified below by OEO, with the Chief Clerk of City Council within fifteen (15) days of receiving a Notice of Award. The Plan shall be filed with:

Michael Decker, Chief Clerk of City Council  
Room 402 City Hall  
Philadelphia, Pennsylvania 19107

The Proposer also 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 Proposer 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. Prompt Payment of M/W/DSBEs

The Proposer 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/DSBEs, the Proposer agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

Each month of the contract term and at the conclusion of the contract, the Proposer 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.

#### C. Oversight Committee

1. For this project, the City, in its sole discretion, may establish a Project Oversight Committee consisting of representatives from the Utility Supplier's company and the City ("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. The Proposer 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 Proposer 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:

Withhold payment(s) or any part thereof until corrective action is taken.

Terminate the contract, in whole or in part.

Suspend/Debar the Proposer from proposing on and/or participating in any future City contracts for a period of up to three (3) years.

Recover as liquidated damages, one percent of the total dollar amount of the annual contract value 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 the Contract 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 the contract. 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 the Contract 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.

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PRINT NAME OF PROPOSER AND TITLE DATE

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SIGNATURE OF PROPOSER AND TITLE DATE

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IOLA HARPER, DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY<sup>4</sup> DATE

*[See Forms on following pages; these Forms, must be submitted by Proposer ]*

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<sup>4</sup> 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.

## APPENDIX “A”

### STATEMENT OF DIVERSITY PRACTICES, POLICIES AND PAST ACHIEVEMENTS

*In compliance with Chapter 17-1600 of the Philadelphia Code, Section 17-1603 entitled “Equal Opportunity Plan: Contents,” the Plan shall contain a statement from the Proposer, developer and/or recipient of financial assistance summarizing past practices by identifying and describing examples of processes used to develop diversity at any/all levels of its organization including, but not limited to, Board and managerial positions. This statement shall also summarize strategic business plans specific to current or past practices of M/W/DSBE utilization on government and non-government projects and procurement. Where appropriate, such a statement should contain:*

1. Describe employment and recruitment policies used to achieve diversity in your workforce.
2. Provide the race, gender, and residential (local) status of your
  - a) Board of Directors
  - b) Management
  - c) General Workforce
3. Identify your organization’s methods of solicitation and utilization of Minority, Woman and Disabled Businesses (M/W/DSBEs). Please be specific in describing outreach and any procurement policies that are focused on creating or sustaining business relationships with M/W/DSBEs.
4. What percentage of your company’s total spend with vendors and suppliers is attributable to M/W/DSBEs? Please include a list of the largest M/W/DSBEs used by your organization in the last 12 months.
  - a) Identify the type of goods or services purchased
  - b) Amount of the contract.
  - c) Indicate if any of these M/W/DSBEs are listed in the City of Philadelphia’s Office of Economic Opportunity Registry.
  - d) Are these companies certified as M/W/DSBEs? Do you rely on any particular certifying agency?
  - e) If there is no previous M/W/DSBE utilization, the Plan shall contain a statement that explains the reason for the lack of M/W/DSBE participation in past contract(s) or project(s).
5. Describe any initiatives made by your organization to increase investment and promote equity ownership by minorities and women.
6. If you have built any renewable energy power plants within the last ten (10) years, please identify (name of firm and percentage of spend) any MBE and or WBE participation used in the design or construction.

7. Provide M/W/DSBE utilization metrics for any projects identified in Section 4.3.1(c) 2. F of the RFP.