

## **DISTRIBUTED SOLAR PHOTOVOLTAIC PROJECT- PNE**

### I. 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 “Best and Good Faith Effort” commitments made by the selected developer, \_\_\_\_\_, and their successors and assigns (“Developer”) pursuant to a Request For Proposals for **DISTRIBUTED SOLAR PHOTOVOLTAIC PROJECT- PNE** (the “RFP”). Developer seeks to supply electricity to the City of Philadelphia under a long-term power purchase agreement (the “Agreement”) for Solar Farm (the “Project”). “Best and Good Faith Efforts” require the provision of 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 the employment of an appropriately diverse workforce in connection with the Project. The term “Best and Good Faith Efforts,” the sufficiency of which shall be in the sole determination of the City, means: Developer’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 Developer makes commitments and causes its professional services providers and contractors retained by Developer (collectively, the “Participants” and each a “Participant”) to make commitments within the M/W/DSBE Participation Ranges established for this Project and employ a diverse workforce as enumerated herein. Participation ranges are specifically enumerated herein in Part II of this Plan.

If authorized by City Council, the Agreement resulting from this RFP is subject to these Plan requirements as required by Section 17-1603 (1). Accordingly, by submission of this Plan, Developer 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 Term and its commitment to cause its Participants to use their Best and Good Faith Efforts to provide subcontracting opportunities for M/W/DSBEs during the Term 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 Developer 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 any Participant is certified by an approved certifying agency, a copy of that certification should be furnished to the OEO.

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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 Participant makes solicitation(s) and commitment(s) with a DBE, Participant 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)

C. In response to the RFP, Developer submits a statement summarizing its current and past practices relating to its diversity practices (see “Appendix A” attached hereto and incorporated herein). This statement identifies and describes examples of processes used to develop diversity at all levels of Developer’s organization including, but not limited to, board and managerial positions. The statement also summarizes Developer’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.

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

E. Developer and its Participant(s) hereby verify that all information submitted to the City including without limitation, this 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. Developer and its Participants also acknowledge that 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, Developer and/or its Participant(s) fraudulently obtain public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

## II. Goals

### A. M/W/DSBE Participation Ranges

As a benchmark for the expression of 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 Project through the exercise of Best and Good Faith Efforts. 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 project and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract:

<b>MBE Ranges</b>		<b>WBE Ranges</b>
13% - 15%	And	7% - 10%

These participation ranges relate to all business opportunities available in connection with the Project during the Term, including, but not limited to, CONSULTATION AND CONSTRUCTION.

### B. Workforce Diversity Goals and Requirements

Developer and its Participants 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 and to the extent feasible<sup>3</sup>:

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<sup>3</sup> These aspirational goals have been informed by the City of Philadelphia Fiscal Year 2019 Economic Opportunity Plan Employment Composition Analysis. Developer and its Participants are responsible for maintaining records that demonstrate an appropriately diverse workforce for this Project which may include customary hourly wage records.

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. Developer Responsiveness and Responsibility

A. Developer shall identify all its M/W/DSBE commitments on the form entitled, “M/W/DSBE Solicitation For Participation and Commitment Form.” The Developer’s identified commitment to use an M/W/DSBE on this form constitutes a representation by Developer, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Developer has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Developer further represents that Developer 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, Developer 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. Developer 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 Developer’s contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Developer 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.

#### 1. Commercially Acceptable Function

A Developer 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 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 Developer receives towards the participation ranges. For example, a Developer 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 execution of the long term power purchase agreement, letters of intent, quotations, and any other accompanying documents regarding commitments with M/W/DSBEs, including the M/W/DSBE Participation and Commitment Form, become part of that agreement. M/W/DSBE commitments are to be memorialized in a written subcontract agreement and are to be maintained throughout the term of the agreement. **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.** Developer is required to continue its Best and Good Faith Efforts during the Term.

#### 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 execution of the agreement which may result in Developer's amendment of its M/W/DSBE Participation and Commitment Form.

#### V. Compliance and Monitoring of Best and Good Faith Efforts

A. The Developer 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 Developer 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 Developer must provide as required and maintain the following contract documentation for a period of three (3) years following of the expiration of the Term:

- 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; and
- Records relating to Workforce Diversity.

##### B. Prompt Payment of M/W/DSBEs

The Developer and its Participants shall endeavor to pay all M/W/DSBEs promptly for accepted work, within a timeframe consistent with industry practices. In connection with payment of its M/W/DSBEs, the Developer agrees to reasonably provide to the OEO, documentation of actual dollar amounts paid to M/W/DSBEs committed to in the Plan.

##### C. Oversight Committee

1. For this project, the City will establish a Project Oversight Committee consisting of representatives from the Developer's company and the City ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.
2. When the Project Oversight Committee is established, the City will convene meetings of the Committee no later than one (1) month after execution of the Agreement.

3. Developer also agrees to present its Plan before the City’s “Economic Opportunity Review Committee” described in Section 17-1607 and which Committee meets quarterly.

VI. Remedies and Penalties for Non-Compliance

A. The Developer agrees that its compliance with the requirements of the Plan is material to the agreement. It is agreed and understood that in the event the City determines that the Developer hereunder has failed to comply with these requirements the City may invoke remedies reserved under Section 17-1605 of The Philadelphia Code, any other rights and remedies the City may have under the Agreement, or any bond filed in connection therewith or at law or in equity. Further, these remedies 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 agreement nor shall it give rise to actions by any third parties including identified M/W/DSBEs. No privity of contract exists between the City and any M/W/DSBE identified in the agreement. The City does not intend to give or confer upon any such M/W/DSBE(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of the agreement except such rights or remedies that the M/W/DSBE 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 DEVELOPER AND TITLE DATE

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SIGNATURE OF DEVELOPER AND TITLE DATE

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

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

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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.

# STATEMENT OF DIVERSITY PRACTICES, POLICIES AND PAST ACHIEVEMENTS

*In compliance with Chapter 17-1600 of the Philadelphia Code, Section 17-1603(1) entitled "Equal Opportunity Plan: Contents," the Plan shall contain a statement from the contractor, developer and/or recipient of financial assistance, which shall include any of their related corporate entities<sup>5</sup>, summarizing past practices, and 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 summarize strategic business plans specific to current or past practices of M/W/DSBE utilization on government and non-government projects and procurement. This statement must specifically identify past City of Philadelphia EOPs and goal attainment. The following should be included:*

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. Identify, for at least the past three years, each EOP that you or your related corporate entity has held with the City; show M/W/DSBE participation and Workforce Diversity under the EOP contrasting actual achievement with the goals contained in the EOP:

Name of EOP Project: \_\_\_\_\_

M/W/DSBE Ranges \_\_\_\_\_

Actual Achievement \_\_\_\_\_

<sup>5</sup> E.g., Developer may have been a signatory to an EOP, under a different name in the past three years.

Workforce Goals \_\_\_\_\_

Actual Achievement \_\_\_\_\_