



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 100253-A
(As Amended on Floor 5/20/2010)

Introduced April 15, 2010

Councilmember Clarke

**Referred to the
Committee on Rules**

AN ORDINANCE

Amending Title 14 of The Philadelphia Code, relating to "Zoning and Planning," by amending Chapter 14-1600, entitled "Miscellaneous," by amending Section 14-1611, entitled "Benjamin Franklin Parkway Controls," by exempting certain building features from being considered as part of the height of a building within a specified area subject to the Benjamin Franklin Parkway Controls, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 14-1600 of The Philadelphia Code, relating to "Miscellaneous," is hereby amended to read as follows:

TITLE 14. ZONING AND PLANNING.

* * *

CHAPTER 14-1600. MISCELLANEOUS.

* * *

§14-1611. Benjamin Franklin Parkway Controls.

* * *

City of Philadelphia

BILL NO. 100253-A, as amended continued

(3) Special Height Control District.

(a) No building within the following boundaries shall exceed one hundred twenty-five (125) feet in height:

(.1) The area bounded by the Schuylkill River, John F. Kennedy Boulevard, North 23rd Street, Arch Street, North 22nd Street, Walden Street, North 21st Street, Cuthbert Street, North 18th Street, Vine Street, Franklin Town Boulevard, North 17th Street, Brandywine Street, North 21st Street, Fairmount Avenue, North 22nd Street, and Aspen Street, following a line extending from the center line of Aspen Street west to the Schuylkill River;

* * *

(.b) The area bounded by Vine Street, 18th Street, the former Wood Street, and Franklin Town Boulevard shall not be subject to the provisions of Section 14-1611(3)(a)(.1) above, solely with respect to any monuments, belfries, cupolas, minarets, pinnacles, gables, spires, or ornamental towers not intended for human occupancy which exceed the 125 feet height restriction;

* * *

SECTION 2. This Ordinance shall take effect immediately.

Explanation:

Italics indicate new matter added.

City of Philadelphia

BILL NO. 100253-A, as amended continued

“Exhibit A”

City of Philadelphia

BILL NO. 100253-A, as amended continued

The Church of Jesus Christ of Latter Day Saints Economic Opportunity Plan

I. PROJECT AND PLAN INTRODUCTION.

The project consists of the design and construction of a new Temple and related buildings and improvements (the "**Project**") by The Church of Jesus Christ of Latter Day Saints (the "**Church**") in Philadelphia, Pennsylvania. The Project will be constructed by the Church in the City of Philadelphia in the block bounded by Vine Street on the south, 18th Street on the west, the former Wood Street on the north and Franklin Town Boulevard on the east, (the "**Site**"). The Church has entered into an agreement with the current owner to purchase the Site, subject to various approvals necessary for the construction of the Project. The purpose, standards and procedures of this Economic Opportunity Plan (the "**Plan**") are the expressed wishes of the Church as set forth herein. Participants shall include any design or other professional services providers and their respective consultants, the general contractor or construction manager retained by the Church to construct the Project (hereinafter referred to as, the "**General Contractor**") and the General Contractor's subcontractors, and all vendors of supplies, services, equipment and materials for the design and construction of the Project (collectively, the "**Participants**" and each a "**Participant**"). All Participants shall be obligated to fully comply with the requirements of the Plan.

The Church is committed to provide meaningful and representative opportunities for minority-owned, women-owned and disabled-owned business enterprises (referred to hereafter individually, as "**MBEs**", "**WBEs**", "**DSBEs**", respectively and collectively, as "**M/W/DSBEs**"), socially and economically disadvantaged owned business enterprises (referred to hereafter as "**DBEs**") and individuals that are Philadelphia residents (referred to hereafter as "**local residents**"), in all phases of the design and construction of the Project. The Church will require that all Participants commit to the commitments in this Plan. Neither the Church nor any Participant shall (and furthermore each Participant shall ensure that their associates, partners or representatives shall not) discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to the Project or with respect to any and all related employment practices.

All Participants in the Project shall observe and be subject to the enforcement of all relevant City of Philadelphia, Commonwealth of Pennsylvania, and federal laws, ordinances, orders, rules and/or regulations regarding M/W/DSBEs and locally-based business enterprises. Furthermore, the Church shall take affirmative action, consistent with sound procurement policies and applicable laws, to ensure that M/W/DSBEs are

City of Philadelphia

BILL NO. 100253-A, as amended continued

afforded a meaningful and representative opportunity to participate in contracts relating to the Project.

For the purposes of this Plan, the term “**minority person**” means the following: African American or Black (persons having origins in any of the Black racial groups of Africa); Hispanic American (persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Asian American (persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka); and Native Americans (which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians).

Agencies and representatives of the City of Philadelphia and/or Commonwealth of Pennsylvania may be consulted regarding the appropriate inclusion of M/W/DSBEs and DBEs in this Project as outlined in this Plan and with regard to its implementation.

II. PROCEDURES FOR DETERMINATION.

A. **Scope/Duration.** - This Plan shall apply to contracts awarded and procurements sourced by the Church and all Participants throughout the construction of the Project.

B. **Statement of Objectives.** - The objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages and solicitations for the Project and communicated to all Participants.

C. **Good Faith Efforts.** - Participants shall use best and good faith efforts (as defined hereunder) to provide appropriate participation and utilization opportunities for M/W/DSBEs, minority workers, female workers and local resident workers. All Project contractors and vendors will be required to do likewise, consistent with best and sound procurement practices, and with applicable law. Best and good faith efforts are those efforts, the scope, intensity and appropriateness of which are designed and performed to achieve the objectives of this Plan including ranges and goals expressed herein. Best and good faith efforts will be deemed adhered to when a Participant meets the criteria set forth in this Plan and demonstrates and documents its efforts throughout the duration of the Project. Each Participant must submit a Subcontracting/Vendor Plan showing how best and good faith efforts were made to achieve said ranges, even if the ranges were not met. This plan must include, but not be limited to, the following:

City of Philadelphia

BILL NO. 100253-A, as amended continued

1. Written request for assistance to the Church three (3) business days prior to the bid due date.

2. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that focus on construction and are owned by M/W/DSBE and/or that focus on M/W/DSBEs.

3. Telephone logs.

4. Evidence of solicitation to qualified M/W/DSBEs and DBEs certified by the Philadelphia Minority Business Enterprise Council ("**MBEC**") or any successor agency, or members of the Pennsylvania Unified Certification Program ("**PaUCP**").

5. Bid results and (if applicable) reasons as to why no awards were made to M/W/DSBEs.

6. Use of City/MBEC-certified business firms via the MBEC directory.

7. Correspondence between the contracting firm and any M/W/DSBE firms.

8. Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting.

9. Specific, general and technical assistance offered and provided to M/W/DSBEs related to their portion of the Project.

10. Proof there was notification of and access to bid documents at the contracting firm's office or other office locations for open and timely review.

D. Monitoring of Best and Good Faith Efforts. – The monitoring and reporting of best and good faith efforts of the Participants shall be established by the Church in consultation with appropriate city, state and federal agencies and/or private professional entities, and shall include (in addition to any further measures that may be required) the following:

1. Participants shall submit copies of signed contracts and purchase orders with M/W/DSBE contractors and subcontractors.

2. Participants shall be ready to provide evidence of timely payments to M/W/DSBE subcontractors, sub-consultants and supply vendors for participation verification. This documentation should be provided monthly or included with every

City of Philadelphia

BILL NO. 100253-A, as amended continued

request for payment.

3. At the conclusion of the Project, Participants shall provide evidence of the actual dollar amounts paid to M/W/DSBE contractors or subcontractors.

4. All Participants that are on-site contractors involved in the construction of the Project shall be prepared to submit "certified" payrolls listing the following items for all on-site employees:

- a. Full name
- b. Social security number
- c. Full address
- d. Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
- e. Gender
- f. Race
- g. Hours worked
- h. All withholding (e.g., laborer, local, state, FICA, etc.)
- i. Name of the contractor and name of the prime for subcontractors
- j. Name of Project

5. Certified payroll reports shall be signed by an authorized officer of the applicable Participant.

6. Participants shall comply with all applicable requirements of any federal, state or local law, ordinance, or regulation relating to contract and payroll compliance.

E. Documentation of Best and Good Faith Efforts and Compliance. Two components have been established to facilitate the inclusion of M/W/DSBEs as contractors and vendors, and minority/female/local residents as Project site workforce participants:

1. M/W/DSBE Contracting and Vending Participation Levels - the

City of Philadelphia

BILL NO. 100253-A, as amended continued

basis for each determination will be the percentage of the total dollar amount of Participant's bid/contract OR the total dollar amount of the bid/contract for the identified Project task.

2. Minority/Female/Local Resident Employment Participation Levels - the basis for each determination will be the projected total on-site field employee hours divided by the number of minority, female and local resident employee hours anticipated to be performed on the contractor's payroll, and each of the contractor's on-site subcontractors payrolls.

F. Oversight Committee. The Church, in consultation with the appropriate agencies and entities, will establish and identify the members of a "**Project Oversight Committee.**" The Project Oversight Committee shall include representatives of the Church, the General Contractor, and the Council member of Philadelphia City Council's Fifth District (or the member's designee from the member's staff), and shall meet during all phases of the Project. The Church and the Project Oversight Committee will engage in monitoring, reporting and problem solving activities including regular meetings to address all matters relevant to further development of this Plan, carrying out its implementation and the successful completion of the Project. In addition, the Church will contract with the Greater Philadelphia Urban Affairs Coalition or an equivalent organization ("**GPUAC**") to assist the Church and the Project Oversight Committee in the monitoring and reporting for the Project.

III. CERTIFIED M/W/DSBEs.

A. Only businesses that are owned and controlled, in both form and substance, as M/W/DSBEs shall be counted towards participation under this Plan. To ensure this standard, all businesses, including joint ventures, must be certified by MBEC, or any successor agency or the PaUCP. Both agencies are authorized to certify such enterprises.

B. M/W/DSBE certification shall not be the sole determination of a bidder's or contractor's financial or technical ability to perform specified work. The Church reserves the right to evaluate the contractor's or subcontractor's ability to satisfy financial, technical, or other criteria separate and apart from said certifications before bid opening. Pre-qualification conditions and requirements shall be conveyed in a fair, open and non-discriminatory manner to all.

C. The Church recognizes that M/W/DSBE certifications may expire or the firm may experience decertification by an authorized governmental entity. Certifications that expire during a M/W/DSBE's participation on a particular phase of the Project may be counted toward overall goals for participation ranges. However, said firm must become recertified prior to consideration for future range/goal credit in this Plan. If a

City of Philadelphia

BILL NO. 100253-A, as amended continued

firm has been decertified, said firm will not be eligible to participate.

IV. NON-COMPLIANCE.

A. In cases where the Church has cause to believe that a Participant, acting in good faith, has failed to comply with the provisions of this Plan, the Church in consultation with the Project Oversight Committee and/or appropriate agencies and professional entities, will attempt to resolve the noncompliance through conciliation and mediation.

B. In conciliation, a Participant must satisfy the Church and the Project Oversight Committee that said Participant has made best and good faith efforts to achieve the agreed upon participation ranges and/or goals. Demonstration of best and good faith efforts on the part of a Participant includes:

1. Entering into a contractual relationship with the designated M/W/DSBE firm in a timely, responsive and responsible manner, and fulfilling all contractual requirements, including payments, in said manner.
2. Notifying all parties - including the Church, the M/W/DSBE, the Project Oversight Committee and all relevant Participants of any problems in a timely manner.
3. Requesting assistance from the Church and/or the Project Oversight Committee in resolving any problems with any M/W/DSBE.
4. Making every reasonable effort to appropriately facilitate successful performance of contractual duties by a M/W/DSBE through timely, clear and direct communications and reasonable business assistance.

C. In cases where the Church, in consultation with the Project Oversight Committee, has cause to believe that any Participant has failed to comply with the provisions of this Plan, the Church will conduct an investigation.

D. After affording the Participant notice and an opportunity to be heard, the Church in consultation with the Project Oversight Committee, will take corrective, remedial and/or punitive action. Such actions may include, but are not limited to:

1. Declaring the Participant as non-responsible and/or non-responsive, with a determination being made that the Participant is ineligible to receive the award of a contract, ineligible to continue a contract and/or ineligible for any other future contracts affiliated with the Project;
2. Suspending the violating Participant from doing business with the

City of Philadelphia

BILL NO. 100253-A, as amended continued

Church;

3. Withholding payments to the violating Participant; and/or

4. Pursuing and securing any relief which the Church, in consultation with the Project Oversight Committee, may deem to be necessary, proper, and in the best interest of the Church and the Project and consistent with applicable policy and law.

V. GUIDELINES FOR JOINT VENTURING.

Joint Venture relationships with certified M/W/DSBEs must meet the following criteria in order to receive credit towards the participation goals:

A. The M/W/DSBE partner(s) must be certified by MBEC, PaUCP or an agency authorized by law to certify such enterprises prior to proposal/bid submission.

B. The M/W/DSBE partner(s) must be substantially involved in significant phases of the contract including, but not limited to, the performance (with its own work force) of a portion of the on-site work, and of administrative responsibilities, such as bidding, planning, staffing and daily management.

C. The business arrangements must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their respective ownership interest).

D. If a certified partner is a M/W/DSBE, the participation will be credited only to the extent of the partner's ownership interest in the joint venture. M/W/DSBE participation ranges or goals will apply to the joint venture.

VI. PARTICIPATION RANGES AND GOALS.

A. Demolition and Construction Employment Opportunities:

In support of federal and local policies that target economic benefits to low-income residents, the Church shall require its contractors involved in construction of the Project (including, but not limited to any demolition and/or environmental remediation) to make best and good faith efforts to employ local Philadelphia residents. The Church will also require its General Contractor to use nondiscriminatory employment practices and make best and good faith efforts to employ minority and female persons in the demolition, environmental remediation, and construction workforce consistent with work-hour goals of 35 % and 5%, respectively. The Church will include these goals in all construction related contracts (including but not limited to any demolition and/or environmental remediation) and will require its General Contractor to reference these work-hour goals in all of its subcontracts.

City of Philadelphia

BILL NO. 100253-A, as amended continued

B. Contract Opportunities:

1. Construction Management: The Church will make best and good faith efforts to engage a construction management team with at least 35% participation, with 25% participation by MBEs and 10% participation by WBEs. The Church shall include a provision in the contract with the General Contractor requiring that the General Contractor use best and good faith efforts to provide opportunities for MBEs and WBEs through joint venture and subcontract opportunities and shall include this Plan in the contract with the General Contractor.

2. Architecture and Engineering and Other Professional Services: The Church will make best and good faith efforts to engage a design team, including architects, engineers, and other design and professional service providers, with the stated goals of not less than 10% participation by MBEs, not less than 4% participation by WBEs and not less than 1% participation by DSBEs. These percentages for participation will be applied to the total dollar value of the architectural, engineering and other design and professional service contracts let by the Church, including change orders and scope adjustments.

3. Demolition and Construction: The Church shall require that the General Contractor and its subcontractors make best and good faith efforts to provide contract opportunities for certified M/W/DSBEs with the stated goals of 25% participation by MBEs, 8% participation by WBEs and 2% participation of DSBEs. These percentages for participation will be applied to the total dollar value of all contracts let by the Church or the General Contractor, including all change orders and scope adjustments.

City of Philadelphia

BILL NO. 100253-A, as amended continued