



City of Philadelphia

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

**BILL NO. 120392
(As Amended, 6/13/12)**

Introduced May 10, 2012

**Councilmember Jones
for
Council President Clarke**

**Referred to the
Committee on Technology and Information Services**

AN ORDINANCE

Authorizing the Chief Innovation Officer to enter into up to two multi-year contracts for access to online research services and online legal publications, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Chief Innovation Officer is hereby authorized to enter into up to two multi-year contracts with a provider or providers of research services and legal publications, for online access to such research services and legal publications. Such contracts shall not be for a term in excess of four years.

SECTION 2. No contract authorized under Section 1 shall be entered into unless such contract incorporates an Economic Opportunity Plan in substantially the form attached hereto as Exhibit A.

SECTION 3. The City Solicitor may include in any contract authorized by this Ordinance such terms and conditions as she deems necessary or appropriate in the interests of the City.

EXHIBIT A

City of Philadelphia

BILL NO. 120392 as amended continued

City of Philadelphia Economic Opportunity Plan OPPORTUNITY NUMBER 21120327143558

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. The Economic Opportunity Plan ("Plan") memorializes the Applicant'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"¹) and an appropriately diverse workforce in connection with the contract or covered project.

This Notice of Contracting Opportunity (hereinafter, "NOCO") and any resulting contract are subject to the Plan requirements as described in Section 17-1603 (1). Accordingly, by submission of its proposal, a responsive and responsible Applicant makes a legally binding commitment to abide by the provisions of this Plan which include Applicant's commitment to exercise its best and good faith efforts throughout the contract term to provide meaningful and representative contracting opportunities for M/W/DSBEs and to employ an appropriately diverse workforce which should include minority and female persons in all phases of any contract awarded under this NOCO. By submission of this Plan, Applicant agrees that it shall and shall cause all its professional services providers and consultants retained by Applicant (collectively, the "Participants" and each a "Participant") to use their best and good faith efforts to provide subcontracting opportunities for M/W/DSBEs in all phases of the contract. This Plan expressly applies to all contracts awarded by the successful Applicant and subcontracts awarded by its Participants. The objectives set forth in this Plan shall be incorporated in all requests for proposals 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 agency² 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. If Applicant is certified by an approved certifying agency, a copy of that certification should be furnished with the proposal.

C. Neither Applicant nor any Participant shall 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 this NOCO. Applicant is required to submit a statement summarizing current and past practices relating to its diversity practices. Attachment "A" to this Plan is provided for this purpose and should

¹ "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.
²A list of "OEO approved certifying agencies" can be found at www.phila.gov/oEO

City of Philadelphia

BILL NO. 120392 as amended continued

be submitted with Applicant's proposal although the City reserves the right to request it at any time prior to contract award.

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

II. Goals

A. M/W/DSBE Participation

Applicant shall make Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in the contract in consideration of the size and scope of the contract and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract.

B. Employment Goals

Applicant agrees to make Best and Good Faith Efforts to employ a diverse workforce which includes minority persons, disabled persons, females and local residents.

III. Applicant Responsiveness and Responsibility

A. Applicant 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 Applicant's identified commitment to use an M/W/DSBE on this form constitutes a representation by Applicant, that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Applicant has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Applicant further represents that if Applicant is awarded the contract, Applicant 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, Applicant 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. Applicant 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 Successful Applicant's contract is increased by change order and/or modification, or amendment, it shall be the responsibility of the Successful Applicant 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.

EOP [NOC for Contract Requiring City Council Authorization]
City of Philadelphia/OEO
October 2011

City of Philadelphia

BILL NO. 120392 as amended continued

1. Commercially Acceptable Function

An Applicant 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 in accordance with the NOCO), 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/DSBE subcontractors 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 Applicant receives towards the participation ranges. For example, a Applicant 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 described by the NOCO and 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 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 and shall apply to the total contract value (including approved change orders and amendments). 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, Applicant is required to continue its Best and Good Faith Efforts.

C. In the event Applicant 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 NOCO and/or does not agree to employ a diverse workforce as described herein, Applicant 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. Applicant must provide a list of all certification directories used for soliciting participation for this NOCO. Applicant 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

EOP [NOC for Contract Requiring City Council Authorization]
City of Philadelphia/OEO
October 2011

City of Philadelphia

BILL NO. 120392 as amended continued

2. Applicant 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. Applicant negotiated in good faith with interested M/W/DSBEs. An Applicant 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 Applicant would otherwise prefer to self-perform/supply these items; and

ii. Correspondence between the Applicant 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 NOCO;
and

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

v. Applicant sought assistance from the Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation to perform employment outreach; and

vi. Applicant 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.

III. Evaluation of Responsiveness and Responsibility

EOP [NOC for Contract Requiring City Council Authorization]
City of Philadelphia/OEO
October 2011

City of Philadelphia

BILL NO. 120392 as amended continued

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the Applicant's 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 Applicant'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 Applicant has not made sufficient Best and Good Faith Efforts, the Applicant 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 Applicant 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.

IV. Compliance and Monitoring of Best and Good Faith Efforts

A. The Successful Applicant 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 Successful Applicant 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 Successful Applicant 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.

EOP *[[NOC for Contract Requiring City Council Authorization]]*
City of Philadelphia/OEO
October 2011

B. Prompt Payment of M/W/DSBEs

1. The Successful Applicant 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/DSBE subcontractors, the Successful Applicant agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.
2. Each month of the contract term and at the conclusion of the contract, the Successful Applicant 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 Applicant'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.

V. Remedies and Penalties for Non-Compliance

A. The Successful Applicant 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 Successful Applicant 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:

- a. Withhold payment(s) or any part thereof until corrective action is taken.
- b. Terminate the contract, in whole or in part.
- c. Suspend/Debar the successful Applicant from proposing on and/or participating in any future City contracts for a period of up to three (3) years.

City of Philadelphia

BILL NO. 120392 as amended continued

- d. Recover as liquidated damages, one percent of the total dollar amount of the contract 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 any contract resulting from this NOCO 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 any contract resulting from this NOCO. 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 any contract resulting from this NOCO 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.

SIGNATURE OF APPLICANT AND TITLE

DATE

ANGELA DOWD-BURTON, DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY³ DATE

[See Forms on following pages; these Forms, as completed by Applicant, must be submitted with the Application as a matter of Responsiveness and Responsibility]

³ 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.

EOP *[NOC for Contract Requiring City Council Authorization]*
City of Philadelphia/OEO
October 2011

DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)		BID/RFP SUBMISSION DATE -	
Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises ¹			
BID/RFP TITLE -			
NAME OF BIDDER/PROPOSER-			
<i>List below ALL MBE/WBE/DSBE/DBE's that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.</i>			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ² <input type="checkbox"/> W-DBE ² Company Name Address Contact Person Telephone Number <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier OEO CERTIFICATION #	Date Solicited By Phone <input type="checkbox"/> By Mail <input type="checkbox"/> By Advertisement <input type="checkbox"/> YES ² <input type="checkbox"/> NO <input type="checkbox"/> Dollar Amount \$ Percent of Total Proposal %	Commitment Made YES <input type="checkbox"/> NO <input type="checkbox"/> (If Yes, give date solicited) (If No, provide reasons on Page 2)	
Please Specify Work to be Performed and/or Type of Supply Effort			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ² <input type="checkbox"/> W-DBE ² Company Name Address Contact Person Telephone Number <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier OEO CERTIFICATION #	Date Solicited By Phone <input type="checkbox"/> By Mail <input type="checkbox"/> By Advertisement <input type="checkbox"/> YES ² <input type="checkbox"/> NO <input type="checkbox"/> Dollar Amount \$ Percent of Total Proposal %	Commitment Made YES <input type="checkbox"/> NO <input type="checkbox"/> (If Yes, give date solicited) (If No, provide reasons on Page 2)	
Please Specify Work to be Performed and/or Type of Supply Effort			
<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> M-DBE ² <input type="checkbox"/> W-DBE ² Company Name Address Contact Person Telephone Number <input type="checkbox"/> Subcontractor <input type="checkbox"/> Supplier OEO CERTIFICATION #	Date Solicited By Phone <input type="checkbox"/> By Mail <input type="checkbox"/> By Advertisement <input type="checkbox"/> YES ² <input type="checkbox"/> NO <input type="checkbox"/> Dollar Amount \$ Percent of Total Proposal %	Commitment Made YES <input type="checkbox"/> NO <input type="checkbox"/> (If Yes, give date solicited) (If No, provide reasons on Page 2)	
Please Specify Work to be Performed and/or Type of Supply Effort			

¹MBE/WBE/DSBE/DBE's Listed above must be certified prior to bid/rfp submission date.
²Bidder/Proposer should attach quotation with this form, but the City reserves the right to request this information which shall be submitted by bidder/proposer within 48 hours of the City's request.
³If Bidder makes solicitation(s) and commitments with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.

DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

DEPARTMENT OF COMMERCE
OFFICE OF ECONOMIC OPPORTUNITY (OEO)

BID NUMBER/PROJECT TITLE - Online Research Services and Legal Publications	NAME OF BIDDER/PROPOSER -	BID/RFP OPENING DATE -
--	----------------------------------	-------------------------------

Photocopy this form as necessary; you must respond for each solicited M/W/DSBE for which there is no commitment. Failure to do so may result in rejection of your bid/proposal.

Name of M/W/DSBE solicited for which no commitment was made:

No commitment resulted from your solicitation of the above identified M/W/DSBE; please explain why:

Did you attempt, in good faith, to negotiate price and scope (please be specific, attaching any dated price quotations and correspondence):

Did you offer this M/W/DSBE any arms length business assistance (e.g., introduction to manufacturer, helped provide access to line of credit, access to union hall, etc.):

Did you provide this M/W/DSBE with timely information about the scope of work required; be specific and attach dated documentary evidence of the foregoing:

DOCUMENTATION OF BEST AND GOOD FAITH EFFORTS FORM

DEPARTMENT OF COMMERCE OFFICE OF ECONOMIC OPPORTUNITY (OEO)	
BID NUMBER/PROJECT TITLE - Online Research Services and Legal Publications	NAME OF BIDDER/PROPOSER -
BID/RFP OPENING DATE -	
Do you operate or provide funding to any on-the-job training or apprenticeship programs? If so please describe and provide the number of trainees and breakout of minority, female and/or disabled participants: Photocopy this form as necessary	
Did you seek assistance from the Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation to perform employee outreach? Provide your list of minority, female, and/or disabled recruitment agencies or other community based organizations that your firm uses for employment placement:	
Describe any specific outreach activities through job fairs, newspapers, periodicals, advertisements and other organizations or media that are owned by M/W/D/S/BEs and/or focus on M/W/D/S/BEs:	
Identify the unions with which you have a collective bargaining agreement. Describe any hiring practices, or involvement in Commonwealth approved apprenticeship programs that specifically encourage the training and employment of minority, women and/or disabled persons:	
List all directors or CEOs of M/W/D/S/BEs (e.g., OEO, Keasney, Pennsylvania United Certification Program, Department of General Services) that you consulted in preparing your bid/proposal:	
Attach your company's Equal Employment Opportunity Statement and any published nondiscrimination policies.	