

REBUILD PROJECT ECONOMIC OPPORTUNITY PLAN

I. Introduction and Definitions

Chapter 17-1600 of The Philadelphia Code requires the development and implementation of “Economic Opportunity Plan(s)” (“**EOPs**”) for certain classes of contracts and covered projects as defined in Section 17-1601. Rebuilding Community Infrastructure, generally referred to as “Rebuild,” is a City of Philadelphia (the “**City**”) program for the construction, demolition, renovation and equipping of the City’s parks, libraries, playgrounds, recreation centers and other related facilities for the purpose of creating first-class, modern, safe, and clean parks, recreation centers, and libraries. Diversity and inclusion is a pillar of the Rebuild program and this Economic Opportunity Plan (the “**Project EOP**”) will establish goals for achieving the objectives of Diverse Business Inclusion and Workforce Diversity for the [_____] project (the “**Project**”). This Project EOP will also outline and delineate roles and responsibilities between the City, acting through its Rebuild Office, the Philadelphia Authority for Industrial Development (“**PAID**”), _____ (the “**Project User**”), and _____ (the “**Contractor**”).

For purposes of this Project EOP, the following definitions will apply:

Diverse Business Inclusion means each Contractor’s Best and Good Faith Efforts to provide meaningful and representative opportunities for Minority Business Enterprises (“**MBEs**”) and Woman Business Enterprises (“**WBEs**”) (collectively, “**M/WBEs**” which also includes firms designated as Disadvantaged Business Enterprises or “**DBEs**”). In furtherance of Section 17-1502 of The Philadelphia Code and as informed by the City’s most current Annual Disparity Study, contract opportunities for MBEs may be separated into categories of firms owned by African Americans, Hispanic Americans, Asian Americans and Native Americans.

Best and Good Faith Efforts means those efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/WBEs and achieve an appropriately diverse workforce. Best and Good Faith Efforts are considered met (subject to audit and verification that commitments are met), when a Contractor makes binding contractual commitments within the M/WBE participation ranges established for the contract and commits to employ a diverse workforce within the goals and timetable established for the contract.

Commercially Useful Function. An M/WBE performs a Commercially Useful Function when it performs a distinct element of a contract (as required by the work to be performed in accordance with the bid specifications) which is worthy of the dollar amount of the M/WBE’s contract and the M/WBE carries out its responsibilities by **(a)** managing and supervising the work involved and **(b)** actually self-performing at least twenty percent (20%) of the work of the contract with its own workforce. For suppliers, an M/WBE

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. Whether an M/WBE performs a “Commercially Useful Function” will be evaluated and determined by the EOP Monitor and the Rebuild Office on a bid-by-bid basis as informed by prevailing industry standards and the M/WBE’s NAIC Codes and may require, without limitation, evidence of a warehouse, distribution equipment, and certified payroll records.

Diverse Workforce refers to the recruitment, hiring, training, employment and trades union referral, as both journeypersons and apprentices, of workers who are African American, Hispanic American, Asian American, and/or Female.

Philadelphia Resident means, to the extent permitted by law, a positive factor for consideration given to those workers residing in Philadelphia and also includes those businesses certified as Local Business Enterprises under Section 17-109 of The Philadelphia Code or meeting the criteria described in Executive Order 04-12.

Grant Agreement means the contract signed between the Project User and PAID for the Project.

II. Rebuild Diversity and Inclusion Goals

A. Diverse Business Inclusion – Contract Participation Goals

As a benchmark for Contractor’s expression of its Best and Good Faith Efforts to provide meaningful and representative opportunities for M/WBEs the Project, the following contract participation ranges have been developed. These contract participation ranges represent, in the absence of discrimination in the solicitation and selection of M/WBEs, the percentage of M/WBE participation that would be reasonably attainable on this Project through the exercise of Contractor’s Best and Good Faith Efforts:

Professional services contracts: 25-30% MBE and 15-20% WBE

Construction contracts: 30-35% MBE and 15-20% WBE

For purposes of calculating contract participation:

- In order to maximize opportunities for as many businesses as possible, a business that is certified in two or more categories (e.g., MBE and WBE) will only be credited toward one participation range as either an MBE or WBE. The business will not be credited toward more than one category.
- In addition to certification, businesses must be registered with the City of Philadelphia’s Office of Economic Opportunity (“**OEO**”) as MBE and/or WBE in order to count toward

contract participation goals for Diverse Business Inclusion. Visit phila.mwdsbe.com for more information.

- Only first and second-tier vendors will be included in the contract participation calculation. See the table below for more details:

	<u>TIER</u>	<u>EXAMPLE</u>
	Project Lead	Project User
Included; counts toward participation goals	1st-Tier vendor	Contractor
Included; counts toward participation goals	2nd-Tier vendor	Subcontractors
Not Included; does not count toward participation goals	<i>3rd-Tier vendor and below</i>	<i>Further subcontractors</i>

- While contract participation is only calculated based on the first two tiers of contracting, EOP Monitors will observe and track an additional contracting tier (i.e., the third-tier contractors) in order to identify any second-tier contractors improperly acting as “pass-throughs.” “**Pass-throughs**” are defined in this context as contractors who are certified as M/WBEM/WBEs, thus allowing their contract dollars to count for participation, but who are not performing a Commercially Useful Function because they are not actually performing, managing, and supervising their work with their own workforce. Employment of a pass-through contractor constitutes a violation of this Project EOP and can be considered fraudulent activity. If a pass-through scenario is suspected, the EOP Monitor will investigate and alert PRA and the Rebuild Office so that appropriate actions can be taken.
- In calculating the percentage of M/WBE participation, the standard mathematical rules apply in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern.
- There are some Project costs that are excluded from the contract participation calculation. The following describes such cost categories, which must be included in the project budget but will be excluded from the contract participation calculation:

Nonprofit/Government: Project costs committed or disbursed to nonprofit organizations or government agencies are excluded from the contract participation calculation.

Few Or No Opportunity (FONO) Services: Project costs associated with vendors providing a set of services that few or no MBE- or WBE-certified vendors provide in Philadelphia’s marketplace are excluded from the contract participation calculation.

Permitting fees: Permitting fees are excluded from the contract participation calculation.

Contingency costs: Any contingency costs held in the project budget are excluded from the contract participation calculation. As those costs become “active” and are reallocated to vendors, those dollars will be included in the calculation.

B. Diverse Workforce – Workforce Participation Goals

Contractor agrees to exhaust its Best and Good Faith Efforts to employ an appropriately Diverse Workforce which will include minority persons and females at all tiers of employment and management. An appropriately Diverse Workforce is one which reflects the local availability and historic utilization of Philadelphia residents, and also recognizes underutilization of diverse workers across all trades. The following are expressed as hourly project employment goals for workforce participation:

- Total minority laborer and skilled workforce hours 45% (African American journeypersons 27%, Hispanic journeypersons 15%, and Asian journeypersons 3%);
- Total minority workforce hours for laborers, 60% and total minority workforce hours for skilled, 40%;
- Total women laborer and skilled workforce hours 5%;
- Total women workforce hours, 5% laborer and 5% skilled.
- Local construction workforce: 50-60%.

III. Contractor Responsiveness and Responsibility

A. Memorializing Contract and Workforce Participation Commitments. Contractor shall identify all of its M/WBE contract participation and diverse workforce participation commitments on the following forms:

(i) Contract Participation Commitments. Contractor shall identify its contract participation commitments on the **Rebuild Bid Package Contract Participation Worksheet** (Attachment C, Form 06-B, Excel template provided). The identification of Contractor’s commitment to use the identified M/WBEs constitutes a representation by Contractor that **(a)** each M/WBE identified on the form will provide a Commercially Useful Function; and **(b)** Contractor has made or intends to make a legally binding commitment with the M/WBE for the work or supply effort described and for the dollar/percentage amount(s) set forth on the form. Contractor shall maintain the M/WBE percentage commitments (which apply to the total amount of the contract and any additional increases) throughout the term of the contract. Without limiting any other vendor selection requirements that may be applicable, as part of Contractor’s vendor selection process, Contractor shall solicit vendors from [Rebuild’s business supports programs](#), including Rebuild Ready (for a list of Rebuild Ready participants, see Attachment B, Section 6 to the bid documents) and Rebuild’s Emerging Vendors Program (search

for Emerging Vendor Program vendors through the [OEO database](#)), which may support Contractor's diverse contracting goals.

(ii) Workforce Participation Commitments. Contractor shall identify its plan to solicit and maintain a diverse workforce on a weekly basis with the estimated hourly breakout for African American, Hispanic, Asian and Women workers. The plan must be contained in the Documentation of Best and Good Faith Efforts, **Documentation of Best and Good Faith Efforts Workforce Diversity Goals Form** (Attachment C, Form 06-C). The plan must demonstrate that efforts have been made and are ongoing to meet or exceed the aforementioned employment goals. As part of this plan, Contractor shall solicit worker referrals from the Rebuild workforce development programs, which support training to develop diverse apprentice-ready workers in the skilled trades (see Attachment C, Form 06-e for more information).

(iii) Any reference in this Project EOP to the "Project EOP" is deemed to include a reference to the above-listed documents required to be developed by this Project EOP and, upon completion, each of those documents is deemed to be incorporated by reference into this Project EOP.

B. Contractor Covenants. Contractor shall comply with the following provisions:

(i) If Contractor or any subcontractor make any changes that would impact the contract participation and workforce participation commitments made pursuant to this Project EOP, then Contractor shall inform the Project User and the Rebuild Office and obtain approval for a substitution in accordance with the Project User's Grant Agreement and the Rebuild Rulebook. Failure to do so will constitute a breach of this Project EOP and of the contract.

(ii) M/WBE(s) are to be paid promptly for work performed satisfactorily under the contract/subcontract (including without limitation the supply of materials). Contractor shall pay subcontractors (and shall require subcontractors to pay their lower-tier contractors) within 5 business days of receiving payment. Compliance with this requirement is a condition of subsequent invoice approval and payment.

(iii) Contractor agrees to fully comply with any established payment reporting process which may include the use of electronic payment verification systems (i.e., LCP Tracker).

(iv) In support of Rebuild's overall goal of a local construction workforce of 50%-60% Philadelphia residents, Contractor is strongly encouraged to cause its subcontractors to hire workers residing in Philadelphia and make commitments with businesses certified as Local Business Enterprises ("**LBE**") under Section 17-109 of The Philadelphia Code or meeting the criteria described in Executive Order 04-12.

(v) Contractor agrees that its compliance with the contract and workforce participation commitments developed to meet the goals of this Project EOP is material to its contract. Any failure by Contractor to comply with the requirements of this Project EOP and to

achieve the contract and workforce participation commitments made pursuant to this Project EOP will constitute a substantial breach of this Project EOP and the contract and may subject Contractor to all remedies available to the Project User, PAID, and the City under this Project EOP, contract, the Grant Agreement, and otherwise available at law and at equity.

C. Verification of True and Accurate Information. Contractor hereby verifies and agrees that all information submitted to the Project User, PAID, and the Rebuild Office in response to this Project EOP is and will be true and correct. Submission of false information is subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities and 18 Pa. C.S. § 4107.2(a)(4) relating to fraud in connection with minority business enterprises or women’s business enterprises.

IV. Compliance and Monitoring of Best and Good Faith Efforts

A. Rebuild EOP Oversight Committee. Members of the Rebuild EOP Oversight Committee will include Councilmembers, City department representatives (such as the Rebuild Office and the Office of Economic Opportunity), and non-governmental experts in workforce development and development of M/WBEs. The Rebuild EOP Oversight Committee will oversee the performance of the Rebuild Diversity and Inclusion Goals, including without limitation reviewing EOPs, reviewing supports provided to M/WBEs and activities pursuant to the Rebuild Memorandum of Understanding with the Building Trades. The Rebuild EOP Oversight Committee is expected to meet no less frequently than quarterly.

B. Rebuild Monitor.

Contractor shall (and shall cause all subcontractors to) provide the designated third-party monitor (“**Rebuild Monitor**” or “**EOP Monitor**”) with full access to contracts, job sites, and all data requested to evaluate performance as compared to the contract and workforce participation commitments made pursuant to the Project EOP. The Rebuild Monitor will be empowered to assist consultants and contractors with achieving workforce and contract participation goals as necessary.

On each contract for Rebuild improvements, when twenty-five percent (25%) of total projected employment hours are complete, and when twenty-five percent (25%) of the total contract value has been expended, the Rebuild Monitor will determine whether Contractor is on track to meet its contract participation and workforce participation commitments. The Rebuild Monitor will report findings to the Project User, the Rebuild Office, and the Rebuild EOP Oversight Committee and may report findings to the district Councilmember and with any member of the Project Review Team.

C. Certified Payrolls and LCP Tracker. Contractor shall (and shall cause all subcontractors to) submit certified payroll records to the Office of Labor Standards through an electronic system, LCP Tracker, on a weekly basis. Compliance with this requirement is a condition of invoice approval and payment. Contractor shall ensure that the City of Philadelphia’s Office of Labor Standards is given full access to job sites and all data requested to monitor

compliance. The Rebuild Office and/ or the Office of Labor Standards can provide training and/or support to Contractor and subcontractors in the use of LCP Tracker, if needed. Contractor shall not allow any subcontractors to work on the Project's construction site until each subcontractor has opened an account in LCP Tracker.

V. Remedies and Incentives

A. If it is determined by the Project User, the City, or the EOP Monitor that Contractor has not met, or is not on track to meet, its contract participation or workforce participation commitments, then steps will be taken that include but are not limited to the following:

- (i) **Assistance.** The Project User, Rebuild Office, and the EOP Monitor, in cooperation with the Office of Labor Standards (OLS), will take steps to assist Contractor in making course corrections. Such steps might include the identification of alternative M/WBEs or alternative ways of packaging contracts. Contractor shall cooperate in these efforts and shall take all steps necessary to correct any deficiencies in compliance with the Project EOP.
- (ii) **Written plan.** Contractor shall prepare a written compliance action plan to show how Contractor plans to come into compliance with the Project EOP. The plan will be subject to the approval of PAID and the Rebuild Office. The Project User, Office of Labor Standards, the EOP Monitor, District Councilmembers, and the Rebuild EOP Oversight Committee may also be consulted.

B. If it is determined by the Project User, the Rebuild Office, the Office of Labor Standards, or the EOP Monitor that Contractor has failed to take successful or acceptable steps to meet its contract participation or workforce participation commitments, then one or more of the following remedies, which are cumulative and concurrent, may be imposed:

- (i) **Withholding payment.** The Project User and Rebuild Office may withhold invoice approvals so that payments (including but not limited to retainage payments) to Contractor or any non-compliant subcontractor will be suspended.
- (ii) **Rebuild EOP Oversight Committee.** Contractor and any non-compliant subcontractor may be called to appear before the Rebuild EOP Oversight Committee to address the Project EOP violations.
- (iii) **Work stoppage.** Contractor may be directed to stop work or to stop the work of any non-compliant subcontractor. The goal of the work stoppage would be to stop using workforce hours and incurring expenses until a viable plan for meeting Project EOP goals can be implemented. It is understood that work stoppages should be avoided if possible because of potential significant negative consequences for all parties. If this step is necessary, Contractor would be responsible for any delay costs resulting from the work stoppage.

- (iv) **Liquidated damages.** PAID or the City may recover as liquidated damages one percent of the total dollar amount of the relevant contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The “total dollar amount of the contract” includes approved change orders, amendments, and for requirements contracts will be based on actual quantities ordered.)
- (v) **Contract termination.** The contract (or the contract of any non-compliant subcontractor) may be suspended, terminated, or rescinded.
- (vi) **Disqualification and debarment.** The Rebuild Office may disqualify Contractor or any non-compliant subcontractor from bidding on and/or participating in any future Rebuild contracts and/or projects, in addition to recommending that Contractor or non-compliant subcontractor be disqualified from bidding on and/or participating in City of Philadelphia projects for a maximum period of three (3) years.

C. In the case of falsification of records and minority business fraud, criminal penalties may also apply.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES FOLLOW]

CONTRACTOR

Signature and Date

Print Name

Title

Company