

City of Philadelphia



(Bill No. 070994-A)

AN ORDINANCE

Authorizing the Director of Finance, Commissioner of Public Property and other officials of the City to execute either directly or through the Philadelphia Authority for Industrial Development various agreements, instruments of conveyance and other transactional documents by and among the City, the Commonwealth of Pennsylvania and the Pennsylvania Convention Center Authority related to the development, construction, financing, operation and management of an expanded Pennsylvania Convention Center and including the defeasance of outstanding Pennsylvania Convention Center Authority bonds, the release of the lien of the Trust Indenture dated as of December 15, 1989, as amended and supplemented, relating to such bonds, the termination of the existing Lease and Service Agreement, the sale of the existing Convention Center building and improvements to the Philadelphia Authority for Industrial Development for further conveyance to the Commonwealth of Pennsylvania, or its designee and the execution of a long term ground lease of the land under the existing Convention Center to the Commonwealth of Pennsylvania; all under certain terms and conditions.

WHEREAS, By agreement dated December 14, 1989 (authorized by Bill No. 533 of 1989) City and the Pennsylvania Convention Center Authority (the "Authority") entered into a Lease and Service Agreement, as amended and supplemented (the "Original Lease and Service Agreement") pursuant to which, among other things, the City leased certain real property to the Authority (the "Land") and provided for the design, development, construction, operation and management of the Pennsylvania Convention Center (the "Original Convention Center") and payment by the City to the Authority of a certain service fee (the "Service Fee"). The Original Lease and Service Agreement provided that upon its termination, title to all buildings, improvements and fixtures (the "Improvements") would automatically vest in the City without the need for any further action; and

WHEREAS, the City, the Authority and the Commonwealth of Pennsylvania (the "Commonwealth") desire to expand and renovate the Original Convention Center (the "Convention Center Project"), and will undertake, or have undertaken, the development, design, construction, and operation of the expansion and renovation of the Original Convention Center consisting of the following:

A. acquisition of land for the expansion project by the Commonwealth, demolition, site preparation and the design and construction of an approximately 960,000 square foot expansion of the Original Convention Center (the "Expanded Portion," and together with the Original Convention Center, the "Convention Center"). The Expanded Portion will begin at the westerly wall of the Original

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Convention Center at 13th Street and proceed west to Broad Street and north from Arch Street to Race Street, excluding the Liberty Title Building; and

B. renovation of the Original Convention Center to accommodate new elevators and support space including the purchase and installation of furniture, furnishings and equipment (FF&E) for the Expanded Portion. The renovation of the Original Convention Center consists of demolishing and reconstructing approximately 30,000 square feet of the back of the Original Convention Center support spaces; and

WHEREAS, in support of the Convention Center Project, City Council has authorized or is currently considering certain legislation, including; amending Title 14 of the The Philadelphia Code by adding a new Section 14-1632 entitled Convention Center Expansion Area Special District Controls; authorizing the Commonwealth to construct, own and maintain an overbuild on 13th Street between Race and Arch Streets; conveying the City's interest in 1328 Race Street to the Philadelphia Authority for Industrial Development (the "PAID") for further transfer to the Commonwealth; authorizing the revision of lines and grades of streets, alleys and passageways within the Expanded Portion boundaries; and authorizing the Commonwealth to construct, own and maintain encroachments into the right-of-way of the east side of North Broad Street between Arch and Race and the south side of Race between North Broad and 12th Streets; and

WHEREAS, under and pursuant to the terms and conditions of a Convention Center Agreement (the "Convention Center Agreement"), the City, the Commonwealth and the Authority intend to set forth the various roles and responsibilities of each of the parties relative to the ongoing management of the Convention Center and the undertaking of the Convention Center Project; and

WHEREAS, the Convention Center Agreement shall terminate upon the first to occur of: (i) the defeasance of the outstanding Authority bonds used to finance the Original Convention Center and the release of the lien of the Trust Indenture dated as of December 15, 1989, as amended and supplemented, relating to such bonds (the "Defeasance of Convention Center Bonds") or (ii) June 30, 2008. Upon Defeasance of Convention Center Bonds, the Original Lease and Service Agreement shall terminate and the Authority shall surrender to the City the Land and the Improvements and as otherwise provided among the parties in an agreement of termination of the Original Lease and Service Agreement ("Termination of the Lease and Service Agreement"); and

WHEREAS, upon the Defeasance of Convention Center Bonds and the surrender to the City of the Original Convention Center Land and Improvements, the City shall transfer the Improvements to PAID for further transfer to the Commonwealth, or its designee for nominal consideration and shall enter into a ground lease for nominal consideration (the "Ground Lease") with the Commonwealth, or its designee as tenant for the Land; and

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WHEREAS, a new operating agreement substantially in the form attached as Exhibit B, defining the rights and responsibilities of the City, the Commonwealth and the Authority with regard to the Convention Center Project (the "New Operating Agreement") will be effective upon the expiration of the term of the Convention Center Agreement pursuant to which the City, will be required to pay an annual service fee to the Authority of \$17,486,522.00 in Fiscal Year 2008-09 and \$15,000,000.00 in Fiscal Year 2009-10 and thereafter in each fiscal year for the term of the New Operating Agreement; NOW THEREFORE,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

Section 1. The Director of Finance is authorized to enter into the Convention Center Agreement among the Commonwealth, the Authority and the City (substantially in the form attached as Exhibit A) which sets forth the various roles and responsibilities of each of the parties thereto relative to the ongoing management of the Convention Center and the undertaking of the Convention Center Project and which terminates on the effective date of the New Operating Agreement, provided that the Convention Center Agreement shall include the following provisions:

(a) The Authority shall enter into a Project Labor Agreement (Agreement) applicable to the Convention Center Project, which Agreement shall include provisions: (i) recognizing that participation by minority and women workforce is an important value for the project; (ii) requiring any union on the project to commit to achieving the aspirational goals in the approved Economic Opportunity Plan for workforce utilization of 40% minority (25% African-American; 10% Hispanic-American and 5% Asian-American), and 10% women; (iii) providing a process for minority and women inclusion through apprenticeship and training programs for previous non-union employees; (iv) requiring at least 350 new apprentices/trainees to be employed through the unions, with quarterly progress reports on compliance with these goals filed with City Council.

(b) The Agreement shall require each participating labor union to agree to identify its membership and the demographics of its membership, to the extent permitted by law.

(c) No labor union shall be permitted to execute the Agreement unless it has entered into a Diversity Plan approved by Council by resolution, which Plan sets forth long-term inclusionary goals for minorities and women to the extent permitted by law, and providing sanctions for non-compliance.

Section 2. The Director of Finance is authorized to enter into the New Operating Agreement among the Commonwealth, the Authority and the City (substantially in the form attached as Exhibit B) which provides inter alia, for the payment by City to PCCA

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of \$17,486,522.00 in Fiscal Year 2008-09 and \$15,000,000.00 in Fiscal Year 2009-10 and in each fiscal year thereafter during the term of the New Operating Agreement, but not to extend beyond December 31, 2032. Council agrees to make appropriations in each of the City's fiscal years to provide for payments due under the New Operating Agreement and to the extent not appropriated in one fiscal year to appropriate in the next fiscal year.

Section 3. The Director of Finance and Commissioner of Public Property are authorized to enter into a Termination of Lease and Service Agreement between the Authority and the City providing for, among other things, the termination of the Original Lease and Service Agreement, the Defeasance of Convention Center Bonds and as otherwise required under the terms of the Original Lease and Service Agreement.

Section 4. The Commissioner of Public Property is authorized to execute and deliver a special warranty deed conveying for nominal consideration the Original Convention Center Improvements to the PAID for further conveyance to the Commonwealth, or its designee at nominal consideration.

Section 5. The Commissioner of Public Property is authorized to enter into a Ground Lease agreement for nominal consideration between City, as landlord and the Commonwealth or its designee, as tenant for the Original Convention Center Land generally bounded by Arch Street, Race Street, 13th Street and 11th Street for a term equal to that of the New Operating Agreement and providing upon termination that title to the Original Convention Center Land and Improvements revert back to the City or its designee.

Section 6. The Director of Finance, Commissioner of Public Property and other officials of the City are authorized to take all actions necessary to accomplish the intent and purpose of this Ordinance.

Section 7. The City Solicitor is hereby authorized to review and to approve all instruments and documents necessary to effectuate this Ordinance, which instruments and documents shall contain such terms and conditions as the City Solicitor shall deem necessary and proper to protect the interests of the City of Philadelphia and carry out the purpose of this Ordinance.

Section 8. The Chief Clerk of City Council shall keep on file all exhibits referenced in this Ordinance and shall make them available for inspection by the public during regular office hours.

[Note: Exhibits to this Bill are on file in the Office of the Chief Clerk.]

**PENNSYLVANIA CONVENTION CENTER
AUTHORITY EXPANSION PROJECT**

ECONOMIC OPPORTUNITY PLAN-BILL NO. 070994

I. Convention Center Project and Plan Introduction.

The Pennsylvania Convention Center Authority (the "Authority") is an agency and public instrumentality of the Commonwealth of Pennsylvania (the "Commonwealth") and a body politic and corporate created and existing under the Pennsylvania Convention Center Authority Act, 64 Pa. Cons. Stat. Ann. § 6001, et seq, as amended (the "Act"). The Authority is authorized and empowered under the Act for the purposes of, inter alia, acquiring, holding, developing, designing, constructing, maintaining, managing, operating, financing, furnishing, fixturing, equipping, repairing, leasing or subleasing either in the capacity of lessor or lessee or sublessor or sublessee, and owning a convention center or parts thereof in cities of the first class.

The City of Philadelphia (the "City"), a municipal corporation, is a city of the first class and a body corporate and politic, organized and existing under the laws of the Commonwealth.

The City, the Authority and the Commonwealth (the "Parties") desire to have developed, designed, constructed, furnished, equipped, financed, operated and maintained a convention center facility within the geographical limits of the City (the "Original Convention Center"). In order to undertake the foregoing, the Authority issued its Revenue Bonds, 1989 Series A, in the original aggregate principal amount of \$285,860,610.65 (the "1989 Bonds"), for the purpose of financing a portion of the costs of a project of the Authority consisting of the development, design, construction, operation and management of the Original Convention Center (the "Original Convention Center Project").

In conjunction with the Original Convention Center Project and the 1989 Bonds issued to finance the same, the Authority and the City entered into a Lease and Service Agreement dated as of December 14, 1989 (the "Original Lease and Service Agreement") pursuant to which, among other things, the City leased certain real property to the Authority (the "Land") in consideration of certain rentals payable by the Authority to the City, and the City agreed to pay to the Authority a certain service fee (the "Service Fee") in consideration of the undertakings of the Authority with respect to the Original Convention Center Project and the financing thereof. Further, the Original Lease and Service Agreement provided that upon its termination, title to all buildings, improvements and/or fixtures (as described therein) (the "Improvements") would automatically vest in the City without the need for any further action.

The City, the Authority and the Commonwealth now desire to expand and renovate the Original Convention Center (the "Convention Center Project"), and will undertake, or have undertaken, the development, design, construction, and operation of the expansion and renovation of the Original Convention Center, as contained in drawings, specifications and the Design Development Summary Report constituting the design development documents, which the Authority caused to be prepared and submitted to the Commonwealth for review and acceptance. The Convention Center Project consists of the following:

- (i) acquisition of land, demolition, site preparation and the design and construction of an approximately 960,000 square foot expansion of the Original Convention Center (the “Expanded Portion,” and together with the Original Convention Center, the “Convention Center”). The Expanded Portion will begin at the westerly wall of the Original Convention Center at 13th Street and proceed west to Broad Street and north from Arch Street to Race Street, excluding the Liberty Title Building;
- (ii) renovation of the Original Convention Center to accommodate new elevators and support space for the Expanded Portion. The renovation of the Original Convention Center consists of demolishing and reconstructing approximately 30,000 square feet of the back of the Original Convention Center support spaces; and
- (iii) purchase and installation of the furniture, furnishings and equipment for the Expanded Portion.

In addition to its payment obligations hereunder, the City agrees to provide the following support to the Convention Center Project:

- (i) the waiver of all permitting fees, licensing fees, assessments and other charges imposed by the City and associated with the review and approval of plans, granting of permits, utility shut-offs and relocations, inspections and certificates of occupancy relative to the Convention Center Project;
- (ii) the reimbursement to the Authority for the relocation of certain water systems in and around the Expanded Portion, as defined in the Asset Acquisition Agreement by and between the Philadelphia Water Department and the Authority;
- (iii) the transfer of fee title to the former fire station, located at 1328 Race Street; and
- (iv) the closure of portions of Cherry Street and other rights-of-way and encroachments within portions of 13th Street and Broad Street, as authorized by City Council.

The City, the Authority and the Commonwealth further agree that because the Convention Center Project occurs within the geographical limits of the City of Philadelphia, the Authority agrees to accept in connection with said Project the provisions contained in Chapter 17-1600 ECONOMIC OPPORTUNITY PLANS, as contained within the Philadelphia Code. It is understood by the Parties that some “covered” work may be completed or under contract. As to that work not completed but under contract, the Parties will consider appropriate ways to seek compliance with this Economic Opportunity Plan (the “Plan”).

The purpose, standards and procedures of this Economic Opportunity Plan (the “Plan”) are the expressed wishes of the Authority as set forth herein. “Participant” shall be as defined in

Philadelphia Code Chapter 17-1601(4). All Participants shall be obligated to fully comply with the requirements of the Plan.

The Authority is committed to provide meaningful and representative opportunities for minority-owned, women-owned and disabled-owned business enterprises as such businesses are defined and certified by governmental certifying agencies (referred to hereafter individually, as “MBEs”, “WBEs”, “DSBEs”, respectively and collectively, as “M/W/DSBEs”), and individuals that are Philadelphia residents (referred to hereafter as “local residents”), in all phases of the Convention Center Project. Authority will require that all Participants commit to the foregoing commitment. Neither the Authority nor any Participant shall (and furthermore 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 Convention Center Project or with respect to any and all related employment practices.

All Participants in the Convention Center Project shall observe and be subject to the enforcement of all relevant City, Commonwealth and federal laws, ordinances, orders, rules and/or regulations regarding M/W/DSBEs and locally-based business enterprises. Furthermore, proactive action will be taken, consistent with sound procurement policies and applicable laws, to ensure that M/W/DSBEs are afforded a meaningful and representative opportunity to participate in contracts relating to the Convention Center Project.

For the purposes of this Plan, the term “minority person” shall refer to the following: African American or Black, Hispanic American, Asian American and Native Americans. The term “disabled person” shall refer to a person who has a physical or mental impairment that substantially limits one or more of his or her major life activities, such as caring for oneself, performing manual tasks, e.g., walking, seeing, hearing, speaking, breathing, learning and performing physical work.

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

II. Construction Opportunities; Aspirational Participation Goals:

The Parties desire to use the largest public works project in the City as an engine for new economic opportunity for businesses and employees, particularly for minority persons, women and disabled persons. The Authority will require that its General Contractor use nondiscriminatory employment practices and make best and good faith efforts to employ minority and female persons in the construction workforce consistent with workforce utilization goals of 40% (25%-African-American; 10%-Hispanic-American; and 5% Asian American) and 10%, respectively. The Authority will include these goals in all construction related contracts and will require its General Contractor to reference these workforce utilization goals in all of its subcontracts.

The Authority shall also 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

goals of 35% (20%-African-American; 10%-Hispanic-American; and 5%-Asian American) participation by MBEs, 15% participation by WBEs and encourage participation of DSBEs. These percentages for participation will be applied to the total dollar value of all contracts let by the Authority or the General Contractor, including all change orders and scope adjustments.

With respect to the employment of local residents, the Authority will also require that its General Contractor make best and good faith efforts to employ local residents in the construction workforce consistent with a workforce utilization goal of 50%.

Scope/Duration. - This Plan shall apply to contracts awarded and procurements sourced by the Authority and all Participants throughout the construction of the Convention Center Project. Applicable provisions of the Plan will be implemented by the Authority during the operation of the expanded Convention Center.

III. Permanent Employment Opportunities:

- A. As a part of this Plan, the Authority commits to staffing diversity in the existing eighty (80) full-time and part-time positions. Of the twenty (20) new full-time jobs expected to be created in connection with the operation of the new facility (the "Facility"), the Authority shall make every effort to meet the following minimum goals for the employment of minority persons, females and disabled persons in the operation of the Facility: 35% for minority persons, 15% for females and encouraged percentage for disabled persons.
- B. The Authority shall make every effort to reach out to sources of employment like the Philadelphia Workforce Development Corporation, the Urban League of Philadelphia, the Opportunity Industrial Center and the Jewish Employment and Vocational Services that can refer minority, female and disabled workers.
- C. Building Operations: The Authority may contract with third parties for security services, food services and/ or other building operations services. In consultation with MBEC the Convention Center Project Oversight Committee and other appropriate parties, the Authority will establish participation ranges for all such contracts and will apply all applicable provisions of this Plan to said contracts.

IV. Procedures for Determination and Monitoring of Best and Good Faith Efforts

- A. Statement of Objectives. - The objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages and solicitations (collectively, "Invitations to Bid") for the Convention Center Project and communicated to all Participants. Subject to the provisions of the Pennsylvania Convention Center Authority Act, as amended, all Invitations To Bid are subject to this Plan and the requirements as set forth in Section 17-1603 (2) of Chapter 17-1600 of The Philadelphia Code. Accordingly, by submission of its bid, a Participant makes a legally binding commitment to abide by the provisions of this Plan which includes Participant'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, to the extent feasible,

an appropriately diverse workforce of minority, women and disabled persons in all phases of the contract awarded under its bid.

Participants shall respond to the Aspirational Participation Goals set forth in Part II by completing the attached **Documentation of Best and Good Faith Efforts Form (“BGFE Form”)** documenting its solicitations and commitments to M/W/DSBEs along with information, presented in question and answer style, detailing its exercise of best and good faith efforts to include M/W/DSBEs in the contract. The submission of the BGFE Form is an element of bid responsiveness and failure to include this form with the Plan may result in the rejection of the bid. A Participant’s failure to use good faith in completing the BGFE Form may result, upon investigation, in Participant being found non-responsible.

- B. Best and 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. *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 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 BGFE Form showing how *best and good faith efforts* were made to achieve said goals, even if the goals were not met. The BGFE Form should include evidence that the Participant engaged, among other things, in the following efforts:
1. 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.
 2. Telephone logs.
 3. Evidence of solicitation to qualified M/W/DSBEs certified by the Philadelphia Minority Business Enterprise Council (“MBEC”) or those entities identified in Part VI(A) of this Plan or any successor agency, the Department of General Services of the Commonwealth of Pennsylvania pursuant to the principles found in 4 Pa. Code 958.201 et seq. or members of the Pennsylvania Unified Certification Program (“PA UCP”). Participant must determine with certainty if the M/W/DSBEs are interested by taking appropriate steps to follow upon initial solicitation; one time contact, without any follow up, is not acceptable.
 4. Bid results and reasons as to why no awards were made to M/W/DSBEs.
 5. Correspondence between the contracting firm and any M/W/DSBE firms.
 6. Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting.

7. Encourage M/W/DSBEs to confer with GPUAC, PWDC, and similar organizations regarding specific, general and technical assistance offered and provided to M/W/DSBEs related to their portion of the Convention Center Project.
 8. 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.
 9. Sought assistance from Greater Philadelphia Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation ("PWDC") to perform employment outreach.
 10. Maintain a published policy of nondiscrimination in the hiring, retention and promotion of employees.
 11. Have an agreement with an apprenticeship or training program that targets the employment of minority persons, disabled persons and women.
 12. Made commitments to use M/W/DSBEs in its bid for subcontracted services and materials supply even when the non-MBEs, WBEs and DSBEs Participant might otherwise prefer to perform/supply these items without subcontracting.
 13. 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.
 14. Provided arms length business assistance to interested M/W/DSBEs which may include access/introduction to major manufacturer/suppliers, lines of credit and union halls.
 15. Negotiated in good faith with interested M/W/DSBEs. A Bidder 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 Authority's Antidiscrimination Policy into consideration.
- C. *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 Authority 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. All Participants that are on-site contractors or subcontractors involved in the construction of the Convention Center Project shall submit copies of

“certified” payrolls, signed contracts and purchase orders with M/W/DSBE contractors and subcontractors.

2. Subject to all applicable law, including but not limited to the Prompt Payment Act as defined in the Commonwealth Procurement Code relating to payment obligations. 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 request for payment.
3. At the conclusion of the Convention Center 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 Convention Center Project shall be prepared to submit data sufficient to verify workforce utilization.
5. The Authority or its agents shall conduct on-site labor census at least twice per week, on a random basis, to document levels of minority and female participation, based upon information provided for payroll verification, and prepare reports on their findings each time a census is conducted.

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

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

E. Oversight Committee.

1. The Authority will establish and identify the members of a “Convention Center Project Oversight Committee.” The Convention Center Project Oversight Committee is expected to include: representatives of the Authority, the City including City Council and other City representatives, the Commonwealth and other appropriate parties including one representative from the Hispanic Chamber of Commerce and the African American Chamber of Commerce, and shall meet during all phases of the

Convention Center Project. The Authority and the Convention Center Project Oversight Committee will engage in monitoring, reporting (including to City Council) 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.

2. The Authority will convene meetings of the Convention Center Project Oversight Committee no later than one (1) month after the initiation of the construction phase of the Convention Center Project.

V. Responsiveness

A presumptively responsive submission is one in which a Participant submits the BGFE form demonstrating best and good faith efforts, as above defined, to provide meaningful and representative contracting opportunities for M/W/DSBEs and commits to employ, to the extent feasible, an appropriately diverse workforce of minority, women and disabled persons in all phases of the contract and achieves the Aspirational Participation Goals set forth in Part II.

If however the proposed level of M/W/DSDBE participation falls below the goals set forth in Part II the bidder must prove to the satisfaction of the Authority that notwithstanding its best and good faith efforts, its proposed level of M/W/DSDBE participation is the best that can be attained. If the bidder proves to the satisfaction of the Authority that it has exercised best and good faith efforts, its bid shall be deemed to be responsive in this respect.

VI. Certified M/W/DSBEs

- A. Only businesses that are owned and controlled, in both form and substance by minority persons, women and disabled persons shall be counted towards participation under this Plan. To ensure this standard, all businesses, including participants of joint ventures, must be certified by one of the following certifying agencies: MBEC, or any successor agency, the Department of General Services of the Commonwealth of Pennsylvania pursuant to the principles found in 4 Pa. Code § 58.201 et seq. for the purposes of this Plan or the Pennsylvania Unified Certification Program (Pa UCP). In order to maximize opportunities for as many businesses as possible, Authority will permit each prime consultant and prime contractor to identify certifiable firms to their bid ("certifiable firms" shall mean those firms which are eligible for certification). These certifiable firms must be certified prior to the award of contract in order for their participation to count towards the prime's best and good faith efforts. The City's MBEC grants reciprocal certification to businesses that have been duly certified by approved governmental entities, including their home state, or other jurisdictions that similarly grant reciprocity to M/W/DSBEs certified by the MBEC.
- 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 Authority 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 Authority recognizes that M/W/DSBE certifications may expire or the firm may experience decertification by an authorized governmental entity. Certifications that expire during an M/W/DSBE's participation on a particular phase of the Convention Center 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 firm has been decertified, said firm will not be eligible to participate or be counted.

VII. Non-Compliance

- A. In cases where the Authority has cause to believe that a Participant, has failed to comply with the provisions of this Plan, the Authority in consultation with the Convention Center Project Oversight Committee and/or appropriate agencies and professional entities, will attempt to resolve the noncompliance through conciliation and mediation.
- B. In cases where the Authority, its agents, consultants, in consultation with the Convention Center Project Oversight Committee, has cause to believe that any Participant has failed to comply with the provisions of this Plan, the Authority will conduct an investigation.
- C. After affording the Participant notice and an opportunity to be heard, the Authority, its agents, consultants, in consultation with the Convention Center Project Oversight Committee, may take corrective, remedial and/or punitive action. Such actions may include, but are not limited to:
1. Declaring the Participant in default;
 2. Suspending and/or debaring the violating Participant from doing business with the Authority;
 3. Withholding payments to the violating Participant.

VIII. 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, PA UCP 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 an 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.

IX. Referral Apprentice Participation Program (“Program”)

The goal of this Program is to provide individuals in the Philadelphia community, who have not previously participated in a governmentally-certified apprentice program, an opportunity to become a full-fledged participant in such a program. The Authority is advised by PWDC that such Philadelphia residents are available and qualified to work on the Convention Center Project. This is accomplished by requiring Convention Center Project contractors to hire individuals that come through the Program to work as apprentices on the Convention Center Project, and sponsor their admission to a governmentally-certified apprentice program. In this way, these individuals become full participants in such apprentice programs. The essential elements of the Program are, in summary, as follows:

Individuals will be recruited from the Philadelphia community on a non-discriminatory basis as “Candidates” for the program. Once the Program is satisfied that the Candidates meet all of the qualifications to participate in such an apprentice program, actually pass the apprentice program’s standard entrance examination and are prepared to work on the Convention Center Project, they will be “Certified Pre-Apprentices.” The Program will then include their name on a list provided to contractors on the Convention Center Project for hiring purposes. When they are hired by a contractor to meet their contractual requirements on the Convention Center Project, the contractor will also sponsor their admission to the apprentice program. These individuals thereby become full participants in the apprentice program while working for the contractor. At this point, they will be known as “New Apprentices”. As full participants in the apprentice program, they have all the rights and obligations of any apprentice program participant.

To make sure there are sufficient opportunities for individuals to benefit from the Program, the Authority will require that the maximum number of apprentices permissible under existing journeyman/apprentice ratios be utilized on the Convention Center Project. The Program further requires that a minimum of 50% of all apprentice hours in each trade be performed by New Apprentices, i.e., individuals who were recruited and processed through the Program, and who are hired by the contractor from the list compiled by the Program. These requirements will be incorporated into each construction contract and, preferably, a project labor agreement.

X. Reporting Requirements and Public Records.**A. Reporting**

1. By the fifteenth (15th) day following the end of each month, the Authority shall provide a report to the Convention Center Project Oversight Committee (including City Council) that documents the status of participation of M/W/DSBE contractors and subcontractors which includes the names of each company, the trade or specialty, the amount of each contract, the percent of contract completion for the month being reported and what percent of the overall project this participation represents for the month being reported.
2. By the fifteenth (15th) day following the end of each month, the Authority shall provide a report to the Convention Center Oversight Committee (including City Council) that documents the status of participation of minority, female and local employment on the project. This report at minimum shall include, by trade or specialty, total work force, minority, female and local employment by both number of persons and number of hours worked.

B. Public Records

All records, reports, submissions, including minutes of meetings and decisions made by the Convention Center Oversight Committee, pertaining to the implementation and monitoring of this Economic Opportunity Plan shall be declared public records to the extent permissible by law and shall be made available to the public upon request.

Documentation of Best and Good Faith Efforts Form

Bid Title: _____
City of Philadelphia Bid Number _____

Name of Bidder: _____

Date: _____

I. M/W/DSBE Participation

Name of M/W/DSBE Solicited: _____

Street Address, Telephone and Facsimile Number:

MBEC Certification Number _____

(Check all that apply):

MDC (Minority Owned Business Enterprise)

WBE (Women Owned Business Enterprise)

DSBE (Disabled Owned Business Enterprise)

Date(s) Solicited (month/day/yyyy): ____/____/____

Method(s) of Solicitation (check all that apply):

Telephone

Mail

Advertisement

Commitment:

Yes (If yes, please proceed to Part A)

No (If no, please proceed to Part B)

Part A

If yes, describe / identify the following:

COP: Bid

Subcontractor - Type of Work _____
 Supplier - Type of Supply Effort _____
 Dollar Amount: \$ _____
 Percentage of Bid _____ %

Note: Please attach Letter of Intent and/or Quotation

Part B

If no commitment resulted from the solicitation, please explain what good faith efforts were made and why they were unsuccessful.

Did you attempt to negotiate price and scope (please be specific, attaching any dated price quotations and correspondence)?

What kind of business assistance did you offer the M/W/DSBE (e.g., introduction to manufacturer, helped provide access to line of credit, access to union hall, etc.) ?

What efforts were made to provide to M/W/DSBEs information about the scope of work required?

Are you planning to award this work or supply effort to a non-M/W/DSBE? If so, please explain why. Identify the name of the awarded firm(s), provide the awarded firms' quotation and any price adjusted quotations, scope of work and experience of the awarded firm(s).

II. Workforce Diversity

Do you operate or provide funding to any on-the-job training programs? If so please describe and provide the number of trainees and breakout of minority and female participants.

20P.6d

Provide your list of minority and female recruitment agencies or other community based organizations that your firm uses for employment placement:

Describe any specific outreach activities taken to advise minority persons and women of employment opportunities with your company.

Identify the unions with which you have a collective bargaining agreement. Describe any hiring practices, including Commonwealth of Pennsylvania Department of Labor and Industry approved apprenticeship programs that specifically encourage the training and employment of minority persons and women.

COF. B.d

City of Philadelphia

BILL NO. 070994-A continued

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City of Philadelphia

BILL NO. 070994-A continued

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 19, 2007. The Bill was Signed by the Mayor on December 21, 2007.



Patricia Rafferty
Chief Clerk of the City Council