

# City of Philadelphia



(Bill No. 220457)

## AN ORDINANCE

Authorizing the Public Property Commissioner, on behalf of the City, to execute all documents necessary and appropriate, including conveyances of easements, title, and other interests in City-owned real estate, new leases and amendments to existing leases, to facilitate and support the coordinated and comprehensive development of the Delaware River waterfront, Interstate 95, and Christopher Columbus Boulevard (formerly a portion of Delaware Avenue), in the area bounded by Market Street, Pemberton Street, Front Street, and the Delaware River bulkhead line; and authorizing the Philadelphia Redevelopment Authority to execute corresponding conveyances, amendments and agreements; all under certain terms and conditions.

### *THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. In this ordinance, “Development Area” means the area bounded

- (1) on the north by a line 100 feet north of and parallel with the northern boundary of Market Street,
- (2) on the south by a line following the southern boundary of Pemberton Street extended to the Delaware River,
- (3) on the west by the eastern boundary of Front Street from the northern boundary as described above to the southern boundary as described above, except that between Dock Street and Spruce Street the western boundary is the eastern boundary of 38<sup>th</sup> Parallel Place, and
- (4) on the east by the bulkhead line of the Delaware River and any submerged lands east of the bulkhead line that the Commonwealth of Pennsylvania agrees to lease to the City.

SECTION 2. The Council of the City of Philadelphia finds the following:

- A. The Pennsylvania Department of Transportation (“PennDOT”) constructed Interstate 95 highway (“I-95”) through Philadelphia in the 1960s. As part of its construction of the highway, PennDOT constructed a cover over the highway between Chestnut Street and Sansom Walk and a partial cover between Dock Street and Spruce Street.
- B. The upper surface of the I-95 cover between Chestnut Street and Sansom Walk (the “Chestnut Street Cover”) is public civic space that is enjoyed by Philadelphia residents and visitors and is used as the site of a memorial to the Irish Famine and Irish immigration to Philadelphia and a memorial to Scottish immigration to Philadelphia. The cover between Dock Street and Spruce Street (the “Spruce Street Cover”) supports the

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public civic space known as Foglietta Plaza, which is the site of the Korean War Memorial Park and the Philadelphia Vietnam Veterans Memorial.

C. PennDOT has determined that the Chestnut Street Cover needs to be replaced. PennDOT is willing to replace the cover in connection with improvements it is making to I-95 and other roadways in the Development Area. As part of its Chestnut Street Cover replacement, PennDOT is willing to expand the cover from Chestnut Street southward to include Walnut Street and to extend the cover eastward over Christopher Columbus Boulevard (formerly part of Delaware Avenue) so that the expanded and extended cover will provide approximately ten acres more of public civic space and pedestrian access from the area west of I-95 to the Delaware River waterfront (as expanded and extended, the Chestnut Street Cover is called the “Expanded Chestnut Street Cover”).

D. PennDOT also intends to rebuild and extend the South Street pedestrian bridge over I-95 to provide pedestrians access over Christopher Columbus Boulevard directly to the Delaware River waterfront.

E. PennDOT intends to replace the Spruce Street cover as well but has not yet established a schedule for that project.

F. The Delaware River Waterfront Corporation (“DRWC”) manages and operates the area along the Delaware River commonly known as “Penn’s Landing” under a series of conveyances and agreements (collectively, the “Penn’s Landing Agreements”) between the Commonwealth of Pennsylvania Department of General Services, PennDOT, the City of Philadelphia, the Philadelphia Redevelopment Authority (the “Redevelopment Authority,” formerly known as the Redevelopment Authority of the City of Philadelphia), and DRWC (formerly known as OPDC Penn’s Landing Corporation). Penn’s Landing lies within the Development Area. Under the Penn’s Landing Agreements, the Redevelopment Authority, as tenant, holds a leasehold interest in Penn’s Landing through April 30, 2075, which it has subleased to DRWC, as subtenant.

G. DRWC has obtained proposals for private construction, operation, and management of new mixed-use commercial, residential, retail, and recreational developments, in two development sites within Penn’s Landing (the “Development Sites”). DRWC may in the future develop and redevelop other sites it manages, as subtenant, within the Development Area. In connection with the Development Sites and DRWC’s future projects in the Development Area, DRWC has committed to complying with an Economic Opportunity Plan and obligating its sub-subtenants to comply with that plan. A copy of DRWC’s Economic Opportunity Plan is attached to this ordinance as Exhibit A.

H. Under a joint-use lease agreement between PennDOT and the City, and a sublease between the City and the Interstate Land Management Corporation (“ILMC”), ILMC

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maintains public areas along I-95, including the Chestnut Street Cover and the Spruce Street Cover.

I. To facilitate PennDOT's reconstruction, expansion, and extension of the Chestnut Street Cover, PennDOT requires easements for construction staging areas in portions of Penn's Landing adjoining the proposed Expanded Chestnut Street Cover.

J. To support improvement of the Development Sites, DRWC has determined it is necessary to extend the sublease agreements governing the Development Sites and the remainder of the Development Area for an additional 99 years.

K. The new developments DRWC is promoting at Penn's Landing will benefit from the Expanded Chestnut Street Cover and other improvements PennDOT is making in the Development Area. Revenues from those new developments will, in turn, help support maintenance of the Expanded Chestnut Street Cover.

L. PennDOT's construction of the Expanded Chestnut Street Cover will necessitate a new arrangement for coordinated management, operation, maintenance, and repair of the cover, including possibly changing various parties' respective jurisdiction and responsibilities for those functions.

M. In passing this ordinance, it is City Council's intent that the City coordinate its oversight of the reconstruction, improvement, development, operation, management, and maintenance of the Expanded Chestnut Street Cover, the Spruce Street Cover, the Development Sites, and a public trail and other improvements in the Development Area.

N. It will help achieve City Council's intent by enabling the Public Property Commissioner, together with the City Solicitor, other City officials, and Philadelphia Redevelopment Authority officials, to negotiate, draft, and execute the necessary agreements, amendments, documents, and conveyances under a single authorization.

SECTION 3. The Public Property Commissioner, on behalf of the City of Philadelphia, is authorized to execute new agreements, amendments to existing agreements, termination agreements, conveyances, and other agreements and documents, to do the following:

1. Extend the current term of the Penn's Landing Agreements by 99 years beyond their current expiration dates; waive any right the City has to terminate any of the Penn's Landing Agreements before the end of the extended term; agree the City will not disturb each of DRWC's development tenancies in the Development Area as long as the subtenants and sub-subtenants have not defaulted under their respective agreement beyond applicable notice and cure periods; and execute documents to facilitate development, financing, and insurance in connection with development in the Development Sites.

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2. Convey, lease, license, or give easements to PennDOT and DRWC and its development sub-subtenants for construction staging areas in or adjacent to Penn's Landing and other City-owned or City-controlled land in or adjacent to the Development Area.
3. Coordinate management, operation, maintenance, and repair of the new public civic space on the Expanded Chestnut Street Cover.
4. Regarding the Development Area, remove or add property and otherwise adjust property boundaries, easements, and rights-of-way, and make all necessary amendments to the Penn's Landing Agreements (or enter into new agreements) to incorporate any removal, addition, or adjustment.
5. Enter into other agreements and make other conveyances necessary and appropriate to accomplish City Council's intent expressed in this ordinance.

SECTION 4. Other City department heads and officials are authorized to join in executing documents with the Public Property Commissioner, and to execute additional separate agreements, as are necessary and appropriate to support the Public Property Commissioner's actions pursuant to this ordinance and to accomplish City Council's intent expressed in this ordinance.

SECTION 5. With respect to the Development Area and the developments this ordinance contemplates, the Philadelphia Redevelopment Authority is authorized to execute: (1) new agreements, lease, subleases; (2) amendments to existing agreements, Redevelopment Agreements, leases and subleases; (3) termination agreements; (4) conveyances; and (5) other agreements and documents, and to take all actions as may be necessary to help the City accomplish City Council's intent expressed in this ordinance.

SECTION 6. The City Solicitor is authorized to negotiate and write all documents this ordinance authorizes and make changes to them as the City Solicitor deems are most effective to protect the City's interests and that are consistent with this ordinance, including obligating DRWC and its sub-subtenants to comply with DRWC's Economic Opportunity Plan.

SECTION 7. This ordinance is effective immediately.

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**DELAWARE RIVER WATERFRONT CORPORATION  
ECONOMIC OPPORTUNITY PLAN**

**OVERVIEW**

The Delaware River Waterfront Corporation (DRWC) is a nonprofit corporation organized exclusively for the benefit of the City of Philadelphia and its citizens. DRWC acts as steward of the Delaware River waterfront to provide a benefit to all of the citizens and visitors of the City.

The fundamental purpose of DRWC is to design, develop and manage the central Delaware River waterfront between Oregon and Allegheny Avenues. DRWC's goal is to transform the central Delaware River waterfront into a vibrant destination location with recreational, cultural, and retail amenities. DRWC will serve as a catalyst for high quality investment in public parks, trails, maritime, residential, retail, hotel and other improvements that create a vibrant amenity, extending Philadelphia to the river's edge.

A key element of DRWC's mission is to create equity in economic opportunity, thus creating local economic impact through the inclusion of Minority-Owned, Women-Owned and Disabled-Owned Business Enterprises (M/W/DsBE). To that end, DRWC contracted with the Urban Affairs Coalition (UAC) to help craft an Economic Opportunity Plan which reflects its commitment to meaningful inclusion and captures the Board of Directors' desire to be an industry leader in this important effort.

An Economic Opportunity Plan requires, among other things, a commitment to use best and good faith efforts to provide opportunities for M/W/DsBEs to participate in all phases of project development, contracting, and purchasing.

As a first step in creating the EOP, UAC sought to fully understand the opportunities through an organizational examination of DRWC's operations. The examination identified opportunities in the following areas:

1. Wealth Building through private development opportunities where DRWC has site control
2. Day-to-Day Operations
3. Capital Construction/Project Development

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As a result of this examination of DRWC's operations, UAC recommended an inclusion strategy that included an organizational EOP, construction project EOPs and the development of standard operating procedures. The **organizational EOP** established inclusion goals for DRWC's professional services and procurement and is examined routinely based on the operations of the corporation. On a project-by-project basis, **EOPs are developed for construction and related projects**, taking into consideration the unique characteristics of the project such as professional services, building trades and supplies and materials necessary for the project. The development of **standard operating procedures** established practices and processes to ensure that staff has a set of steps that facilitate inclusive procurement and understand their role in facilitating inclusion as they implement the standard procedures.

UAC recommended development of the organizational EOP as the first step in this process. This rollout allowed DRWC to reaffirm its commitment to inclusion through its real-time procurement and development activity. Next, DRWC established greater transparency and consistency in staff practices by developing and implementing standard operating procedures.

Wealth building strategies have been integrated throughout DRWC's inclusion practices and are a theme that is essential to DRWC's operating procedures and the EOPs. UAC anticipated that some elements of the wealth building strategy would be limited to private and turnkey opportunities managed by DRWC and less applicable to public development projects.

### **IDENTIFICATION OF ORGANIZATIONAL OPPORTUNITIES**

Again, for purposes of the organizational EOP, areas of opportunity include operations and construction/project development.

#### **OPERATIONS**

For the past several years DRWC has had an operating budget of approximately \$10M. An examination of the operations reveals that approximately \$7.5M of the total \$10M are institutional costs such as salary, taxes, management fees, utilities, etc, leaving about \$3.5M in goods and services procured, and therefore, opportunities for inclusion. The operating opportunities include, but are not limited to the following:

1. Professional Services
  - a. Engineering
  - b. Design
  - c. Legal

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- d. Website
  - e. Information Technology
  - f. Payroll Services
  - g. Financial/Audit/Actuarial Services
  - h. Marketing
  - i. Other Consultants
  - j. Commercial Insurance
2. Goods Procured
- a. Janitorial Supplies
  - b. Office Supplies
  - c. Information Technology
  - d. Uniforms
  - e. Printing Services for Brochures
3. Events Related/Programming
- a. Artist Contracts
  - b. Contracted Security Services
  - c. Contracted Cleaning Labor
  - d. Tent and Equipment Rentals
4. Maintenance and Repairs
- a. Contracts associated with ongoing operations
    - i. HVAC
    - ii. Fountains/Pumps
    - iii. CCTV/Security
    - iv. Landscape Maintenance
    - v. Elevator Maintenance
    - vi. Waste Management
5. Equipment Rental
- a. Copiers
  - b. Phone System
6. Sub Leases
- a. Sublease opportunities outside of private development RFP's covered by the wealth building strategy. These are mostly short term leases.
7. Workforce Diversity
- a. DRWC is committed to a diverse workforce in every area of operations and procurement; internally and with its subcontractors.

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It is important to note that the operating budget will fluctuate from year to year. However, the opportunities identified and the approximate 35% of the overall operating budget spent on the procurement of goods and services is expected to remain fairly consistent.

**CAPITAL CONSTRUCTION/PROJECT DEVELOPMENT**

DRWC reports that there is a pattern of investment amounting to \$8M to \$10M annually in project development costs. Examples of completed projects include the Race Street Pier (\$6M), Penn's Landing Marina Renovations (\$2.2M), the Race Street Connector Phase 1(\$1.3M), and the Delaware River Trail (\$20M).

**RECOMMENDATIONS****EOP GoalSetting**

An examination of best practices and DRWC's operations, in addition to the commitment expressed by DRWC's Board of Directors to lead in the area of inclusion, informs broad goals for the organizational EOP.

Based on DRWC's operations and capital investments, DRWC has adopted for the current fiscal year a goal of at least 30% for the inclusion of M/W/DsBEs, which includes broad range goals of 20% - 30% MBE; 5% - 10% WBE; and best faith efforts for DsBE, aggregating operating and capital projects to attain the overall performance percentages.<sup>1</sup>

Participation of M/W/DsBEs is just one of the strategies for inclusion and is easily tracked and monitored. It is also the most common aspect of an inclusion strategy because businesses must be certified by a government-related entity in order to participate and be monitored. However, DRWC chose to use a much broader strategy that includes businesses that are owned by

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<sup>1</sup> It is important to note that the recommendation offered is a range, and as such, will fluctuate with variable factors such as scheduled capital projects, types of capital projects, and spending trends through the operating budget. However, DRWC is committed to performing consistently at the highest end of the stated range.



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minorities and women, although they may not be certified. DRWC also committed to implementing equity models, where appropriate. Consistently, while tracking the participation of M/W/DsBEs, UAC recommended that activities and services performed by entities that are not certified but minority or woman-owned be tracked when possible and reported as a separate component of DRWC's inclusion activities. Some examples of non-certified entities include performing artists and non-profit organizations as well as businesses that provide goods and services within an ordinary corporate setting such as attorneys, accountants, brokers and material suppliers.

Except where mandated, UAC recommends that DRWC promote M/W/DsBE programming rather than a DBE program. A DBE program limits 51% ownership to certain persons with personal net worth of less than \$1.32M and the size of the business, generally, to an average \$22.41M in gross receipts over three years. In general, exceeding these qualifiers requires the business to exit the benefits of the DBE program. While such assets and/or revenue seem to indicate a profitable enterprise that may not need to be included in an inclusion strategy, our recommendation is that DRWC retain as much flexibility as possible in considering business relationships and their impact on inclusion.

UAC recommended and DRWC has adopted the following inclusion practices to facilitate inclusion.

- **Board Oversight Committee** to plan, quantify and monitor DRWC's professional services, supply, material and capital program inclusion approaches, as well as monitor the performance of goals and other inclusion strategies.
- **Ongoing engagement and targeted outreach** to create awareness about DRWC's project pipeline. Outreach and engagement will include suppliers, professional services providers, contractors, building trades, M/W/DsBEs, developers and government agencies, for example.
- **Reporting of labor force utilization** which includes data on race, gender and residency establishes trends and provides real-time information, informing the EOP. UAC recommended this practice be implemented for projects with a capital budget greater than \$50,000 and \$10,000 for contracts and procurement.
- **Hiring Data** includes employment hours worked on a project and is more meaningful than counting the number of workers who work on a project. UAC recommended this

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practice be implemented for projects with a capital budget greater than \$50,000 and \$10,000 for contracts and procurement.

- **Prompt Payment Tools** were implemented in order to address the capitalization and cash-flow needs of many M/W/DsBEs, particularly in the construction industry.
- **Project Oversight Committee(s)** meets regularly and remains focused on the commitment to M/W/DsBEs and minority/female worker utilization. This Committee is generally tasked with inclusion problem-solving. UAC recommends an Oversight Committee for projects with a capital budget greater than \$50,000 and \$10,000 for construction related contracts and procurement. The Project Oversight Committee reports to the Board Oversight Committee.

### **PROACTIVE OUTREACH AND NETWORKING FOR SUCCESS**

A critical task to the success of the EOP is proactive and comprehensive identification of and outreach to M/W/DsBEs.

Early access to DRWC's pipeline of operating and capital projects by interested M/W/DsBEs will help them to be knowledgeable about upcoming opportunities, allow an adequate planning period to prepare for RFP's and bid submittals, and expand the base of potential M/W/DsBEs. Proactive outreach and marketing of DRWC's upcoming opportunities aids in the identification of needed professional services, trades required, and contracting opportunities, again expanding the base of interested firms and increasing responses to DRWC's opportunities.

### **MONITORING AND REPORTING**

Track and report goals for quarterly review and on a project-by-project basis. UAC recommended an annual summary based on quarterly performance and other inclusion outcomes. The report summarizes all contracts, goods and services by firm, M/W/DsBE certification and is further refined into a breakdown stating percentage of WBE, and MBE by race and/or ethnicity.

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UAC recommended that DRWC request that the ethnicity of suppliers/vendors and their employees be provided.<sup>2</sup> Please note that noncompliance does not preclude participation on DRWC activities but helps DRWC to further enhance its inclusion process. In addition to M/W/DsBEs, there are other business enterprise designations that are available from other government entities such as veterans' business enterprises and local business enterprises. UAC recommended that DRWC report on these, as well as document non-profit organizations and other non-standard and non-certified inclusion outcomes of DRWC. While not specifically counted in the overall ranges, efforts in these areas speak directly to DRWC's commitment and its inclusion leadership.

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<sup>2</sup> Defined as **Asian-Indian** - A U.S. citizen whose origins are from India, Pakistan and Bangladesh. **Asian-Pacific** - A U.S. citizen whose origins are from Japan, China, Indonesia, Malaysia, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Thailand, Samoa, Guam, the U.S. Trust Territories of the Pacific or the Northern Marianas. **Black** - A U.S. citizen having origins in any of the Black racial groups of Africa. **Hispanic** - A U.S. citizen of true-born Hispanic heritage, from any of the Spanish-speaking areas of the following regions: Mexico, Central America, South America and the Caribbean Basin only. Brazilians shall be listed under Hispanic designation for review and certification purposes. **Native American** - A person who is an American Indian, Eskimo, Aleut or Native Hawaiian, and regarded as such by the community of which the person claims to be a part. Native Americans must be documented members of a North American tribe, band or otherwise organized group of native people who are indigenous to the continental United States and proof can be provided through a Native American Blood Degree Certificate (i.e., tribal registry letter, tribal roll register number)

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**DELAWARE RIVER WATERFRONT CORPORATION**

**ECONOMIC OPPORTUNITY PLAN**

**PROJECT: -----**

**(The following represents the template language to be used in the implementation of the EOP)**

DRWC intends to transform the central Delaware River waterfront into a vibrant destination location for recreational, cultural, and commercial activities for the residents and visitors of Philadelphia. DRWC will serve as a catalyst for high quality investment in public parks, trails, maritime, residential, retail, hotel and other improvements that create a vibrant amenity, extending Philadelphia to the river's edge. Delaware River Waterfront Corporation (herein referred to as the DRWC) is committed to provide fair and representative opportunities for Minority-Owned, Women-Owned, Disabled-Owned and Locally-Based Business Enterprises (MBE/WBE/DsBE/LBE) on its Professional Service contracts, Procurement, and Construction projects. Each Contractor performing work on behalf of the DRWC shall ensure that its Subcontractors shall not discriminate on the basis of race, color, religion, sex or natural origin in the award and performance of contracts to be utilized in constructing the project with respect to all employment practices. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable laws to ensure that MBE/WBE/DsBE/LBE firms are afforded a fair and representative opportunity to participate in the DRWC's contracts relating to the project.

**I. PROCEDURES FOR IMPLEMENTATION**

- A. Scope/Covered Projects.** This Plan shall apply to all contracts valued at \$50,000 for construction projects and \$10,000 for other contracts awarded by the Directors of the Delaware River Waterfront Corporation with respect to the construction, maintenance and/or business activities of DRWC facilities including construction and supply of material and service ("Covered Projects").
- B. Statement of Objectives.** The Objectives set forth in this Economic Opportunity Plan shall be communicated in all Requests for Proposals and solicitations for Covered Projects and to such contracting organizations as may be determined by the DRWC.

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- C. Good Faith Efforts.** Each Contractor with respect to a Covered Project shall use good faith efforts to arrange for minority-owned (MBE), women-owned (WBE), disabled-owned (DsBE) and locally-based (LBE) business enterprises, insofar as they are competitive with respect to quality, service, delivery time, and price, to be engaged as subcontractors in the construction and/or providing goods and services to the DRWC. Appropriate participation ranges for MBE, WBE, DsBE and LBE firms for Covered Projects will be determined on a project-by-project basis and included in each Covered Contract.
- D. Monitoring of Good Faith Efforts.** The DRWC requirements relative to monitoring good faith efforts of Contractors as to Covered Contracts shall include the following:
1. The Contractor shall submit copies of signed contracts and purchase orders with MBE/WBE/DsBE/LBE subcontractors upon approval of such documents.
  2. Subcontractors, at the request of, shall provide DRWC's authorized representative documentation of the actual dollar amounts paid to MBE/WBE/DsBE/LBE subcontractors.
  3. All On-site Contractors and subcontractors shall submit "certified" payrolls, on a weekly basis, listing the following items for all on-site employees. Certified payroll reports shall be signed by an authorized company officer and must include:
    - a. Full name
    - b. Complete 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 Contractor and Indication of Prime for Subcontractors
    - j. Name of Project

The Delaware River Waterfront Corporation encourages the use of locally-based companies and workers, for contracting and employment opportunities..

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The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this subparagraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor shall comply with all applicable requirements of any federal, state or local law ordinance or regulation relating to affirmative action, equal opportunity and nondiscrimination in employment, and shall use its best efforts to meet all local goals relating thereto.

**E. Documentation of Good Faith Efforts and Compliance.** The following two components have been established for Covered Projects to facilitate the inclusion of MBE/WBE/DsBE/LBE firms as contractors and minorities/females/local residents as site workforce participants. It is required that all bidders submit participation goals with their bids together with Trade and/or employee Worksheets indicating the Contractor's/Vendors plan for achieving participation levels presented for:

1. MBE/WBE/DsBE/LBE contracting participation levels - The basis for each determination will be the total dollar amount of the bid/contract for Covered Projects.
2. Minority/Female/Local Resident Employment Participation Levels - The basis for each determination will be the projected total on-site field/venue employee hours divided by the number of minority, female and local residents employee hours anticipated to be performed on the Contractor's payroll, and each of the Contractor's on-site subcontractors, to determine minority, female and local residents employee participation on Covered Projects.

If the Contractor's MBE/WBE/DsBE participation does not meet or exceed the established goals the Contractor must prepare a Subcontracting/Vendor Plan showing how it has made a good faith "best efforts" to achieve the project goals. This plan must include, but not be limited to, the following:

1. Written request for assistance to DRWC or its authorized agent three (3) business days prior to the bid due date.
2. Solicitation through newspapers, advertisements, job fairs, etc.
3. Telephone logs.
4. Bid results and reasons why no awards were made.

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5. Use of the M/W/DsBE directories of Philadelphia's OEO's and its Recognized Certifying Agencies.
6. Correspondence between your firm and any MBE/WBE/DsBE/LBE firms relating to this projects bid.

**F. Best efforts**

1. To count toward inclusion goals, all M/W/DsBEs must be certified by the Office of Economic Opportunity (OEO) (formerly the Philadelphia Minority Business Enterprise Council (MBEC)) or the Pennsylvania Unified Certification Program (UCP), or current certifications already issued by other states, cities, agencies, etc. Only work performed by certified firms will count toward a contractor's final achievement of its inclusion goals. Certifications that expire during a firm's participation on a particular phase of the project may be counted toward overall goals for participation ranges. However, said firm MUST become re-certified prior to consideration for goal credit for any future contracts affiliated with this plan. If a firm has been de-certified, said firm would not be eligible to participate.
2. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DsBE or WBE and DsBE) will only be credited toward one participation range as either an MBE or WBE or DsBE. The firm will not be credited toward more than one category. Bidders will note with their submission which category, MBE or WBE or DsBE, is submitted for credit.
3. An MBE/WBE/DsBE submitting as the prime bidder is required, like all other bidders, to submit a bid that is responsive to the Policy and will only receive credit toward the relevant participation ranges (e.g., MBE range or WBE range or DsBE range) for the amount of its own work or supply effort on this Invitation and Bid. In addition, the participation of an M/W/DsBE partner, as part of a joint venture created for this bid, may be credited towards the participation ranges only to the extent of the M/W/DsBE partner's ownership interest in the joint venture in accordance with the following criteria:
  - The MBE, WBE or DsBE partner(s) must be certified prior to bid opening;
  - The M/W/DsBE partner(s) must derive substantial benefit from the arrangement;
  - The M/W/DsBE partner(s) must be substantially involved in all phases of the contract including bidding, planning, staffing and daily management;

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- The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital and other resources, etc).
4. For the purpose of applying the participation ranges on DRWC projects that include add or deduct alternates, commitments listed by bidders on the Solicitation for Participation and Commitment Form should be based upon the base bid. In the event DRWC elects to award any add or deduct alternates, the DRWC reserves the right to require the apparent lowest responsible bidder to amend its Solicitation for Participation and Commitment Form, to ensure the bidder's continuing responsibility.

In addition, respondents may provide a more detailed description of any efforts they have made within their company and proposal which will help DRWC achieve its inclusion goals. These efforts may include, but are not limited to the following:

- A description of respondents' written diversity program identifying the race, gender and ethnic composition of its board of directors;
- Its employment profile;
- A list of all M/W/DsBE vendors that the respondent does business with and a statement of the geographic area(s) where its services are most concentrated; and
- A description of respondent's efforts to maintain a diverse workforce, to maintain a diverse board of directors or administer a fair and effective M/W/DsBE contracting process.

**G. Participation Ranges.** Participation ranges will be percentage ranges of the total dollar amounts of all Covered Contracts. Participation ranges for Covered Projects will be set on a contract by contract basis in the sole discretion of the DRWC.

**H. Employment Goals.** In addition to the foregoing, Contractors are encouraged to use good faith efforts to meet or exceed the "Employment Goals" in the performance of Covered Contracts. Employment Goals as to Covered Contracts for women, minorities, disabled persons, and Philadelphia Residents will be set on a project-by-project basis in the discretion of the DRWC.

**I. Competitive Bidding and Non-Discrimination.** Contractors bidding on or performing Covered Contracts shall not be required to engage MBEs, WBEs, DsBEs or LBEs that are not the lowest responsible and qualified bidder, or that otherwise are not competitive with respect



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to quality, service, delivery time or price. Contractors will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual or affectional preference, national origin, handicap, or because he or she is a disabled veteran or a veteran of the Vietnam Era.

## **II. EXEMPTIONS**

The DRWC recognizes that in certain limited circumstances, compliance with this Equal Employment Opportunity MBE/WBE/DsBE/LBE Compliance Program will not be feasible, nor in the best interest of the DRWC. The following contracts may be exempted by the DRWC:

1. A construction related vending and/or supply contract where the total dollar amount of the contract is less than \$10,000.
2. Any public exigency or emergency contract for which the nature of the emergency will not allow for a delay which would occur from competitive solicitation.
3. Every effort will be made to assure that small MBE/WBE/DsBE/LBE firms in the Philadelphia area are included in the soliciting and award of contracts less than \$10,000.

## **III. CERTIFICATION**

To ensure that only businesses which are owned, managed and controlled in both form and substance by MBE/WBE/DsBE are participating in the Delaware River Waterfront Corporation EEO/MBE/WBE/DsBE inclusion plan businesses, including joint ventures and nonprofit organizations, must be certified by a governmental entity authorized to certify such enterprises. LBEs shall be defined as businesses that maintain offices and/or facilities in Philadelphia.

MBE/WBE/DsBE certification shall not be determinative of a Bidder's or Contractor's/Vendor's financial or technical ability to perform specified work. The DRWC reserves the right to evaluate the Bidder's/Proposer's, Contractor's/vendor's or Subcontractor's ability to satisfy financial, technical, or other criteria separate and apart from certification before or after bid opening.

The DRWC recognizes that certified MBE/WBE/DsBE may be de-certified by the certifying governmental entity. Any business that has been de-certified shall not be eligible to participate in the Delaware River Waterfront Corporation MBE/WBE/DsBE Equal Opportunity Plan.

The DRWC reserves the right, if there is cause to do so, to refuse or reject a certification provided by a certifying agency.

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#### **IV. GOOD FAITH NON-COMPLIANCE**

In cases where the DRWC has cause to believe that a contractor, acting in good faith, has failed to comply with the provisions of the plan, DRWC or its authorized agent shall attempt to resolve the noncompliance through conciliation and persuasion.

In conciliation, the contractor must satisfy DRWC or its authorized agent that they have made their "Best Efforts" to achieve the agreed upon participation goals by certified MBE/WBE/DsBE/LBE. "Best Efforts" on the part of the contractor include:

1. Entering into a contractual relationship with the designated MBE/WBE/DsBE/LBE in a timely manner, and fulfilling all contractual requirements.
2. Notifying both the certified MBE/WBE/DsBEs/LBE contractor and DRWC or its authorized agent of any problem in a timely manner.
3. Requesting assistance from DRWC or its authorized agent in resolving any problems with certified MBE/WBE/DsBE/LBE.
4. Making every reasonable effort to assist the certified MBE/WBE/DsBE/LBE in the performance of its contract with the DRWC.

#### **V. WILLFUL NON-COMPLIANCE**

In cases where DRWC or its authorized agent has cause to believe that any Bidder, Proposer, or Contractor has failed to comply with the provisions of the plan, they shall be empowered to conduct an investigation.

After affording the Bidder, Proposer or Contractor notice and an opportunity to be heard, DRWC or its authorized agent will recommend sanctions for each violation of these procedures. Such sanctions may include, but are not limited to:

1. Declaring the bid proposal as non-responsible and the violating Bidder/Proposer as ineligible to receive the award of the contract or any other future contracts.
2. Suspending the violating Bidders/Proposers from doing business with the DRWC for a set period of time.
3. Withholding payments to the violating Bidder/Proposer under the contract.
4. Pursuing and securing any relief which either the DRWC and/or its authorized agent may deem to be necessary, proper, and in the best interest of the DRWC.

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**VI. APPEALS and GRIEVANCES**

A Bidder, Proposer, or Contractor may appeal a decision pursuant to any action taken under the provisions of this EEO/MBE/WBE/DsBE/LBE plan, by filling a written grievance with the DRWC and its authorized agent. An appeal by the Bidder, Proposer or Contractor under this section, however, shall not stay the findings of DRWC or its authorized agent.

The grievance shall set forth the reasons supporting it. The grievance shall be filed within ten (10) working days of the date that the finding, recommendation, proposal or other relief becomes effective. Failure to grieve in a timely manner shall be deemed a waiver of said right of breach of the conditions of this policy.

If a person requests a hearing at the time the grievance is filed, the DRWC and/or its authorized agent shall schedule a hearing within ten (10) working days of the date the grievance is filed, unless the person requesting a hearing agrees to a continuance provided it is not contrary to the best interests of the DRWC to permit the delay. The DRWC and/or its authorized agent shall notify in writing, the person filing the grievance of the date, time and place of the hearing.

If a hearing is not requested, the DRWC and/or its authorized agent shall make a determination and notify the contractor within ten (10) working days.

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**VII. GUIDELINES FOR JOINT VENTURING**

Joint Venture partnership(s) with a certified MBE/WBE/DsBE must meet the following criteria in order to receive credit towards the participation goals:

1. The MBE/WBE/DsBE partner(s) must be certified by a governmental entity authorized by law to certify such enterprises, prior to proposal submission.
2. The MBE/WBE/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 onsite work, and of administrative responsibilities such as bidding, planning, staffing and daily management.
3. 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 interests).
4. If the certified partner(s) is a MBE, its participation may be credited to the extent of the partner’s ownership interest in the joint venture; however, it will still be required to meet DsBE/ WBE goals or vice versa.

If you intend to receive credit towards the minimum participation goals by entering into a joint venture partnership with a certified MBE/WBE/DsBE, you must complete this questionnaire and submit it with your bid/proposal. Please attach a copy of the Joint Venture Agreement.

1. Name of Joint Venture:

\_\_\_\_\_

2. Address of Joint Venture:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Contact Person for Joint Venture:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

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Please identify all of the firms which comprise the Joint Venture partnership. Identify whether the firm is a certified MBE/WBE/DsBE. Include the following information FOR EACH FIRM in the partnership, regardless of ownership:

- a. Name of Firm
- b. Address of Firm
- c. Telephone Number of Firm
- d. Email Address of Firm
- e. IRS ID No.
- f. Type of Certification, if applicable – MBE, WBE or DsBE
- g. Certifying Agency and Certification Number
- h. Percentage of Ownership in Joint Venture

Describe, in detail, the business purpose of the Joint Venture partnership and the role of each firm in the Joint Venture. Include information regarding daily management, bidding, planning, and on-site work and staffing to be provided. Attach supplemental pages if necessary.

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**VIII. PROGRAM GOALS**

The following programs for minority participation have been established for this project. The apparent low bidder, prior to being declared the successful awardee, will be required to agree, in writing, to a plan to extend every effort to meet these levels. This plan will then be incorporated into the Contract between the Contractor and the DRWC.

**PROGRAM #1 - MBE/WBE/DsBE/LBE (BUSINESS PARTICIPATION)**

Covers contracting and should represent the percentage of MBE/WBE/DsBE/LBE Firms, such as your Subcontractors, Material Suppliers, Vendors, etc. included in your proposal. The participation goals are in the percentage ranges set forth below. The percentages are based on the dollar value of each trade contract amount performed by pre-qualified minority, disabled and/or women business enterprises MBE/WBE/DsBE/LBE.

\_\_\_\_\_ % to \_\_\_\_\_ % MBE/WBE/DsBE

\_\_\_\_\_ % to \_\_\_\_\_ % LBE (to be proposed by Contractor)

**PROGRAM #2 - EEO (ON-SITE WORKFORCE PARTICIPATION)**

Covers your On-Site Workforce and should represent the percentage of Minority and Women and Local Resident Employees anticipated to be on your or your on-site Subcontractor’s payroll. The EEO participation goals are in the percentages ranges set forth below. The percentages are of the employment hours on the job for each trade performed by minority, females and local resident workers.

\_\_\_\_\_ % to \_\_\_\_\_ % Minority/Women

\_\_\_\_\_ % to \_\_\_\_\_ % Local Residents (to be proposed by Contractor)

**CONTRACTOR’S BUSINESS and EMPLOYMENT PLAN**

***(To be submitted with bid or proposal)***

*The following shall constitute the Contractor’s plan for satisfying the overall MBE, WBE, DsBE, and LBE contracting and minority/female/locally based employment goals set forth in the bid submission. This information shall be provided for each trade that will be utilized for this project. Use additional paper if necessary.*

**I. Planned Overall MBE Participation (Goals):**

| <b><i>Subcontractor or Vendor</i></b> | <b><i>Trade</i></b> | <b><i>Dollar Value</i></b> | <b><i>% Participation</i></b> |
|---------------------------------------|---------------------|----------------------------|-------------------------------|
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |

**II. Planned Overall WBE Participation (Goals):**

| <b><i>Subcontractor or Vendor</i></b> | <b><i>Trade</i></b> | <b><i>Dollar Value</i></b> | <b><i>% Participation</i></b> |
|---------------------------------------|---------------------|----------------------------|-------------------------------|
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |

**III. Planned Overall DsBE Participation (Goals):**

| <b><i>Subcontractor or Vendor</i></b> | <b><i>Trade</i></b> | <b><i>Dollar Value</i></b> | <b><i>% Participation</i></b> |
|---------------------------------------|---------------------|----------------------------|-------------------------------|
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |

**IV. Planned Overall LBE Participation (Goals):**

| <b><i>Subcontractor or Vendor</i></b> | <b><i>Trade</i></b> | <b><i>Dollar Value</i></b> | <b><i>% Participation</i></b> |
|---------------------------------------|---------------------|----------------------------|-------------------------------|
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |
|                                       |                     |                            |                               |

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***V. Planned Minority/Woman/Local Resident Tradespeople Employment (Goals):***

**Minority Tradespeople Participation** \_\_\_\_\_%

***Female Tradespeople Participation*** \_\_\_\_\_%

***Local Resident Tradespeople Participation*** \_\_\_\_\_%

Project Title: \_\_\_\_\_

Name of Contractor: \_\_\_\_\_

Name of Authorized Contractor Representative: \_\_\_\_\_

Signature of Authorized Contractor Representative: \_\_\_\_\_



# City of Philadelphia

*BILL NO. 220457 continued*

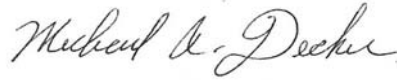
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# City of Philadelphia

*BILL NO. 220457 continued*

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 23, 2022. The Bill was Signed by the Mayor on July 6, 2022.



Michael A. Decker  
Chief Clerk of the City Council