



# City of Philadelphia

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

**BILL NO. 160998**

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**Introduced November 17, 2016**

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**Councilmember Reynolds Brown  
for  
Council President Clarke**

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**Referred to the  
Committee on Commerce and Economic Development**

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## **AN ORDINANCE**

Amending Chapter 17-1600 of The Philadelphia Code, entitled "Economic Opportunity Plans," by adding requirements when exemptions to Economic Opportunity Plans are sought and granted; all under certain terms and conditions.

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

SECTION 1. Chapter 17-1600 of The Philadelphia Code is hereby amended to read as follows:

### CHAPTER 17-1600. ECONOMIC OPPORTUNITY PLANS.

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§ 17-1602. Economic Opportunity Plan Required.

(1) No Covered Project or Contract, shall be approved by City Council unless the Covered Project or Contract contains (a) an Economic Opportunity Plan that comports with the provisions of this Chapter; and (b) a commitment by the applicable contractor, developer or recipient of City financial assistance to comply with the terms of such Plan.

(1.1) No real estate transaction (other than transactions involving exclusively single family homes or exclusively for the development of single family homes) involving a property or properties that either are valued in excess of \$100,000; are anticipated, after development, to be valued in excess of \$100,000; or are anticipated to

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be included as part of a multi-parcel development to be valued in excess of \$100,000, to which the Philadelphia Authority for Industrial Development ("PAID") is a party shall be authorized or approved by City Council unless the ordinance:

(a) Contains a map setting forth the location of the subject property.

(b) Is subject to a commitment by PAID that it will not transfer the property to any third party unless that third party commits (i) to an Economic Opportunity Plan substantially in the form set forth in Section 17-1603; and (ii) to require any subsequent developer of the property to make comparable commitments for a period not to expire prior to five (5) years after the transfer by PAID.

(2) No bidder on a contract that meets the following requirements shall be considered responsible, or eligible for such contract, unless such bidder agrees to abide by the terms of an Economic Opportunity Plan:

(a) Any contract for the purchase of services, including any public works contract, for which the Procurement Department solicits sealed bids under Section 8-200(2) of the Home Rule Charter and which is reasonably anticipated to cost the City more than \$100,000.

(b) Any City concession contract for which the Procurement Department solicits sealed bids under Section 8-201 of the Home Rule Charter and which is reasonably anticipated to produce revenue to the City of more than \$100,000.

(c) A development project or contract bid pursuant to funds allocated to the City pursuant to the American Recovery and Reinvestment Act and which is reasonably anticipated to cost the City more than \$100,000.

(3) Exemptions, Special Conditions.

(a) No contractor, project developer or participant shall be exempt from responding to EOP submission requirements pursuant to the provisions of this chapter for covered contracts, development projects and consideration for financial assistance, unless indicated by the special conditions below.

(b) Under certain limited special conditions, partial or full exemption from EOP compliance provisions shall be granted where and when:

(.1) The Procurement Commissioner certifies that applying the EOP compliance provisions of this chapter would result in the loss of federal, state or similar funds or grants.

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(.2) The City Solicitor certifies that applying EOP compliance provisions is prohibited by applicable law or that exemption from these provisions would be necessary to avoid material damages to the legal interests of the City.

(.3) The Managing Director, a Department Commissioner or other agency official certifies that applying EOP compliance provisions would delay or otherwise inhibit immediate or appropriate response to a public health, safety, or security emergency or crisis.

(c) Certification, in writing, of any such special condition exemption shall accompany any ordinance, contract, project plan or bid subject to this Chapter.

*(d) Under no circumstances shall a partial or full exemption from EOP compliance provisions be granted under this Chapter unless an economically feasible plan, developed with the assistance of the Finance Department, and designed to meet the goals of the most recent disparity study's participation goals (pursuant to Chapter 17-1500) has been implemented by the Participant.*

\* \* \*

§ 17-1603. Economic Opportunity Plan: Contents.

(d) Best and Good Faith Efforts.

(.1) Best and good faith efforts are those efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives of Economic Opportunity Plans. Best and good faith efforts will be deemed adhered to when a Participant meets the criteria set forth hereunder, as well as in the plan, and demonstrates and documents its efforts throughout the duration of the Project or Contract.

(.2) The contractor, developer or recipient of financial assistance shall commit to using best and good faith efforts, as defined hereunder and by the Plan to achieve meaningful and representative participation by M/W/DSBEs, and an appropriately diverse workforce, in all phases of the Covered Project or Contract.

(.3) As evidence of Best and Good Faith Efforts, except where a Participant commits in the Plan to meet particular participation goals, each Participant must submit with its Plan a completed Best and Good Faith Efforts Form (BGFE). The BGFE form shall evidence how best and good faith efforts were made to achieve the

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goals of the Plan, even if the goals were not met. The BGFE Form must include, at a minimum,

(i) certification and evidence that the following actions were taken:

(A) Solicitation directed to qualified M/W/DSBEs registered with OEO and qualified M/W/DSBEs certified by agencies approved by OEO. Participant must determine with reasonable certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitation; one time contact, without follow up, is not acceptable.

(B) The Participant 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;

(C) The Participant 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 Plan into consideration.

*(D) The Participant has developed and implemented a plan of action designed to increase its participation with M/W/DSBEs so as to meet the goals of the plan within a reasonable period of time.*

(ii) documentation of the following:

(D) Any 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.

(E) Correspondence between the contracting firm and any M/W/DSBE firms.

(F) Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting; and

(iii) certification and evidence that the following actions were taken or documentation of the following, or an explanation why these actions were not taken or why documentation does not exist:

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(G) Any arms length business assistance provided to interested M/W/DSBEs which may include access/introduction to major manufacturer/suppliers, lines of credit and union halls.

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

(I) Telephone logs.

(J) Notification of and access to bid documents at the contracting firm's office or other office locations for open and timely review.

(K) Participant sought assistance from the Greater Philadelphia Urban Affairs Coalition, Careerlink Philadelphia, Opportunity Industrial Center and the Philadelphia Workforce Development Corporation ("PWDC") to perform employment outreach.

(L) Participant published its policy of nondiscrimination in the hiring, retention and promotion of employees.

(M) Any agreement with an apprenticeship or training program that targets the employment of minority persons, disabled persons and women.

(e) The Plan shall contain a certification from the certifying agency that the contents of the Plan are in compliance with this Chapter or a certification from the certifying agency why compliance with any particular requirement of this Chapter is not feasible or appropriate, *inclusive of the plan designed to meet compliance if a an exemption has been granted*. Within fifteen (15) days of receiving such certification, the contractor, developer or recipient of financial assistance shall submit a full and final copy of the Plan to the Chief Clerk of Council and the certifying agency shall make a full and final version of the plan available for viewing and downloading on the City's website.

(f) The Plan shall contain a statement from the contractor, developer and/or recipient of financial assistance summarizing past practices by identifying and describing examples of processes used to develop diversity at any/all levels of its organization including, but not limited to, Board and managerial positions. This statement shall also summarize strategic business plans specific to current or past practices of M/W/DSBE utilization on government and non-government projects and procurement. Where appropriate, such a statement should contain: (.1) Board, management, and general employment demographics by race, gender, and residential status; (.2) list of

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M/W/DSBEs utilized by project and date; (.3) whether the M/W/DSBE was certified; (.4) size and scope of contract; (.5) dollar/percentage amount of M/W/DSBE participation; (.6) information on minority and women investment, equity ownership, and other ownership or management opportunities initiated; and (.7) other information requested by City Council during consideration of the Plan. Upon review, if there is no previous M/W/DSBE utilization, the Plan shall contain a statement that explains the reason for the lack of M/W/DSBE participation in past contract(s) or project(s).

SECTION 2. This Ordinance shall take effect on January 1, 2017.

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**Explanation:**

*Italics indicate new matter added.*