

Legislation Text

File #: 060226-AA, Version: 3

Amending Title 17 of The Philadelphia Code, entitled “Contracts and Procurement,” by adding a Chapter providing for the development of and setting forth provisions relating to Economic Opportunity Plans in connection with certain City contracts and projects, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 17 of The Philadelphia Code, entitled “Contracts and Procurement,” is hereby amended to read as follows:

TITLE 17. CONTRACTS AND PROCUREMENT.

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CHAPTER 17-1600. ECONOMIC OPPORTUNITY PLANS.

§17-1601. *Definitions.*

(1) *Covered Project or Contract.* Any of the following, so long as the total value of such contract, development project or financial assistance is reasonably anticipated to exceed \$250,000 (notwithstanding any other dollar or percentage minimums set forth in any incorporated definition):

(a) *Grant of financial assistance, as defined in Section 17-1401.*

(b) *A Non-Competitively Bid Contract, as defined in Section 17-1401.*

(c) *A City-Funded Development Project, as defined in Section 17-1101.*

(d) *A development project or contract that requires an ordinance of Council in order to proceed.*

(e) *A development project or contract that requires an action of the Zoning Board of Adjustment pursuant to section 14-1801(1b) thru (1e).*

(2) *MBEC.* The Minority Business Enterprise Council, any successor entity or such other agency as the Mayor shall designate to be responsible for ensuring non-discrimination in City contracting and for promoting the economic development of M/W/DSBEs through a certification program or otherwise.

(3) *M/W/DSBE.* Unless otherwise defined, in an Economic Opportunity Plan, an M/W/DSBE shall mean a for-profit business that is either:

(a) *A sole proprietorship owned and controlled by a minority person, woman or disabled person.*

(b) A partnership controlled by one or more minority persons, women or disabled persons, in which at least 51 percent of the beneficial ownership interests are held by one or more minority persons, women or disabled persons.

(c) A corporation or other entity controlled by one or more minority persons, women or disabled persons in which at least 51 percent of the beneficial ownership interests in such corporation or entity are owned by one or more minority persons, women or disabled persons.

To the extent the MBEC maintains a certification list of M/W/DSBEs in a particular industry and applies the instant definition, then a business must be certified by the MBEC as an M/W/DSBE to qualify as such.

(4) Participant. Any consultant, architectural/design entity, sub-contractor, construction manager and/or prime contractor engaged by a contractor, a project developer or recipient of financial assistance with respect to a Covered Project or Contract; or with respect to a competitively-bid contract covered by § 17-1602 (2).

§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.

(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 \$250,000.

(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 \$250,000.

(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.

(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.

§17-1603. Economic Opportunity Plan: Contents

(1) For a Covered Project or Contract subject to City Council approval (other than a Covered Project or Contract subject to Section 8-200(2) or 8-201 of the Home Rule Charter), an Economic Opportunity Plan prototype shall be produced by MBEC in conjunction with Council, and serve as the primary form for submission and compliance procedures in accordance with the provisions of this chapter:

(a) The Economic Opportunity Plan prototype and associated contract or project specific details shall be developed and agreed to by the contracting agency, MBEC, representatives of City Council designated by the Council President; and, subsequently, by the contractor, developer or recipient of financial assistance. The contents therein shall constitute the entire Economic Opportunity Plan. Provisions for compliance shall include, though not necessarily be limited to, the following commitments:

(.1) To provide (A) meaningful and representative opportunities for M/W/DSBEs to participate in all phases of the Covered Project or Contract; and (B) an appropriately diverse workforce in all phases of the Covered Project or Contract with regard to minority, female and disabled persons. In furtherance thereof, the contractor, developer or recipient of financial assistance shall use its best and good faith efforts, as defined by the Plan.

(.2) To include in all contracts with Participants, pursuant to the Covered Project or Contract, an enforceable requirement that each Participant abide by the provisions of the Economic Opportunity Plan as set forth therein, pursuant to subsection (.1) of this section, in all phases of the Covered Project or Contract.

(a) The contractor, developer or recipient of financial assistance shall include the requirements of the Plan in all requests for proposals, bid packages and solicitations issued pursuant to the Covered Project or Contract.

(b) Every such contract shall include and define the specific steps, in the form of and/or as stipulated by the Plan, that shall satisfy the Participant's obligation to exercise its best and good faith efforts, including specific outreach and solicitation of M/W/DSBEs for participation in the Covered Project or Contract, and specific outreach and solicitation of a diverse workforce, and including requirements that the contractor submit to the contracting City agency or department and to MBEC documentation of all such steps.

(c) The contractor, developer or recipient of financial assistance shall agree to engage in specific monitoring steps to insure compliance by all Participants.

(d) The contractor, developer or recipient of financial assistance shall agree to include in all contracts with Participants provisions for enforcement of the requirements of the Plan, including but not limited to suspension of payments and cancellation of any contracts for non-compliance, and provisions for appealing any finding of non-compliance.

(.3) To take specific, identified steps to ensure that all M/W/DSBE subcontractors on the Covered Project or Contract are timely paid all moneys owing to them under their subcontracts, and that any disputes that may delay payment are promptly resolved.

(b) The contractor, developer and/or recipient of financial assistance shall be required to engage in an Oversight Process.

(.1) Where appropriate, based on the dollar value, size, scope, duration, financial assistance category of the Covered Project or Contract, and the consideration of other contract or project specific details, the Plan shall establish a Project or Contract Oversight Committee, consisting of, as appropriate, the contractor, developer or recipient of financial assistance and representatives of the Participants, MBEC, City Council, the contracting department or agency and appropriate community organizations. Such Committee shall meet regularly, beginning no later than the initiation of the design phase of the Covered Project or Contract, and shall be responsible for facilitating compliance with the Plan. The Oversight Committee, through the Oversight Process, shall have within its purview the reconciliation of all compliance related issues or grievances.

(.2) The Oversight Committee Process, as needed or as stipulated by the Plan, will involve convening individual consultation or periodic small group meetings to include any or all of the parties identified above in subsection (.1)(a).

(c) The Plan shall contain, to the extent such information is available to the MBEC: (.1) a statement of availability of M/W/DSBEs (expressed in percentage of contract and subcontract value) for various project, contract and subcontract categories; and, (.2) a statement of availability of minority, female and disabled workers in the relevant marketplace for employment, in various job categories. Percentages of availability contained in the Plan shall serve as a guideline for compliance and not the uppermost limit of meaningful participation which may be achieved during any Covered Project or Contract. The contractor, developer or recipient of financial assistance shall commit to using best and good faith efforts, as defined by the Plan, to achieve meaningful and representative participation by M/W/DSBEs, and meaningful and representative employment of minority, female and disabled workers, in all phases of the Covered Project or Contract. Best and good faith efforts, as further defined in the Plan, shall be of such scope, intensity and appropriateness designed to achieve the objectives of this Chapter.

(d) The Plan shall contain a certification from MBEC that the contents of the Plan are in compliance with this Chapter or a certification from MBEC why compliance with any particular requirement of this Chapter is not feasible or appropriate.

(2) For a competitively bid contract subject to Section 8-200(2) or 8-201 of the Home Rule Charter:

(a) The Economic Opportunity Plan prototype shall be obtained by the bidder and submitted with the bid, in accordance with said prototype Plan provisions developed by the MBEC and set forth in the bid specifications. In developing such prototype Plan and provisions for submission, the MBEC shall work in conjunction with Procurement and the contracting agency. As closely as possible, and consistent with competitive bidding rules, the prototype Plan and provisions shall be substantially similar to and consistent with the provisions of subsection (1), above, relating to City Council approved Covered Contracts and Projects. To the extent feasible, such prototype Plan and provisions set forth in the bid specifications shall be uniform in content and structure for all contracts or for all contracts within any category of contracts.

§17-1604 Records and Reports

(1) Records and reports resulting from submission and compliance requirements for Economic Opportunity Plans set forth in this Chapter shall comport with and supplement data requirements and provisions set forth in Chapter 17-1500.

(2) All data required by the Economic Opportunity Plan must be submitted with full and complete disclosure by all contractors, developers, participants and applicants for or recipients of financial assistance required by this Chapter to submit an EOP.

(a) Regular reporting, during the course of the Covered Contract or Project, shall be required on a quarterly basis, ending with a final EOP report to be submitted no later than thirty days after contract or project completion.

§17-1605. Enforcement.

(1) The MBEC and the Oversight Committee through the Oversight Process shall make such findings, recommendations and proposals that are necessary and appropriate to enforce this Chapter. If as a result of monitoring activities, it is determined by MBEC and or the Oversight Committee that the EOP submission and compliance policies and procedures set forth in this Chapter are not being met as required, then appropriate actions shall be recommended.

(2) The MBEC and/or the Oversight Committee through the oversight process determines that a participant, contractor, project developer, applicant for or recipient of financial assistance has demonstrated full and complete EOP compliance with the provisions of this chapter and should be exempt from remedies or penalties as provided for herein, notwithstanding an unmet M/W/DSBE participation goal .

§17-1606. Penalties

(1) A participant, contractor, developer, applicant or recipient of financial assistance, as defined in section 17-1601(4), who has failed to comply with any provisions of this chapter, including any contract provisions imposed by this Chapter, is not eligible for financial assistance consideration or receipt of any financial assistance as set forth in section 17-1601 (1).

(2) If the MBEC and/or the Oversight Committee determines non-compliance with the provisions set

forth in this chapter, they may recommend that the City exercise, through appropriate channels, one or more of the following remedies, as deemed applicable:

a. Withhold payment(s) or any part thereof pending corrective action.

b. Terminate a contract, in whole or in part.

c. Suspend a participant, contractor or recipient of financial assistance from bidding on and/or participating in future City contracts for up to three (3) years.

d. Recover liquidated damages as outlined in the Plan

SECTION 2. Effective date. This Ordinance shall be effective with respect to all approvals by Council and all bid specifications issued ninety days after the Ordinance becomes law.