



**REQUEST FOR PROPOSALS
for the**

EnergyWorks Public Information and Marketing Campaign

**for the
CITY OF PHILADELPHIA**

Issued by:
CITY OF PHILADELPHIA ("City")
Mayor's Office of Sustainability

All Proposals must be submitted electronically through the eContract Philly online application process at www.phila.gov/contracts, choose eContract Philly. Applicants who have failed to file complete applications through the eContract Philly online application process will not be considered for the contract.

Proposals must be received no later than 5:00 p.m. Philadelphia, PA, local time, on Friday, August 6, 2010.

***An Optional Pre-Proposal Conference will be held on
Monday July 26th
at 10am
on the 18th Floor of 1515 Arch St, Philadelphia PA***

Michael A. Nutter, Mayor
Katherine Gajewski, Director

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I. Project Overview

A. Introduction / Statement of Purpose

This Request For Proposal (RFP) is intended to solicit responses from qualified communications and marketing/advertising agencies to help the Metropolitan Caucus and the Philadelphia Mayor's Office of Sustainability design and develop a **comprehensive, highly creative, consistently inventive, and thoroughly modern** marketing and advertising campaign designed to excite residents and businesses across the five county region (Bucks, Chester, Delaware, Montgomery, Philadelphia) about a new program being called "EnergyWorks." EnergyWorks will provide low-interest loans to homeowners and business owners to support energy efficiency retrofits of their buildings. The selected Applicant should have the resources to develop an advertising and marketing campaign to: a) increase awareness of EnergyWorks and its goals; b) increase overall knowledge about energy efficiency retrofitting in the marketplace; and c) increase utilization of EnergyWorks retrofits.

B. Department Overview

This program will be managed jointly by the Mayor's Office of Sustainability and the Office of the Deputy Mayor for Economic Development – an organizational structure that reflects the program's twin commitments to increasing the energy efficiency of buildings across the Philadelphia region and developing the energy efficiency industry as a significant driver of jobs and economic activity.

C. Project Background

EnergyWorks is a new initiative of the Metropolitan Caucus – a coalition of senior elected officials from Philadelphia and the surrounding counties of Bucks, Chester, Delaware, and Montgomery. It is administered, on behalf of the Metropolitan Caucus, by the City of Philadelphia with support from Operating Partners including the Philadelphia Industrial Development Corporation (PIDC), The Reinvestment Fund (TRF), AFC First Financial, and the Energy Coordinating Agency (ECA). The program is supported by a \$25 million Retrofit Ramp Up Grant from the US Department of Energy (DOE) using funding from the American Recovery and Reinvestment Act (ARRA). Retrofit Ramp Up is a signature program of the DOE under the Obama administration, championed by Vice President Biden.

Objective: EnergyWorks will accelerate the creation of a robust private retrofit market in the Greater Philadelphia Region by catalyzing growth in both the supply of and the demand for high performance retrofits. It will catalyze supply by growing the number of firms in the market providing retrofits and the number and quality of workers performing retrofits. It will catalyze demand by expanding access to affordable capital and by educating consumers on the benefits of retrofits.

Project Description: EnergyWorks is built on a platform of two programs listed below, which have proven effective in delivering retrofits. These existing, “ready to go” initiatives will be scaled up and improved upon EnergyWorks funds:

- **Commercial Building Retrofits through The Greenworks Fund:** A partnership between the City’s economic development agency PIDC and the non-profit lender TRF, the Greenworks Fund is dedicated to funding building energy efficiency improvements in privately held commercial buildings. It will use EnergyWorks funds as flexible capital to enter into partnership loans with private banks, creating a low-risk vehicle for private capital to enter into the energy efficiency market throughout the five-county region.
- **Private Home Retrofits through the Keystone HELP Program:** A well-recognized national model in delivering energy efficiency retrofits for single family homes, Keystone HELP utilizes certified contractors as marketing agents for easy-to-access, low-cost loans for home energy efficiency retrofits. The program will scale up dramatically under EnergyWorks, using EnergyWorks funds to buy down interest rates on existing capital, opening the program to a new segment of buyers. The program will also offer:
 - Rebates for home energy audits to help make those audits cheaper and more accessible
 - Free, independent quality assurance so that homeowners know their retrofit was performed correctly
 - Workshops for contractors to help more firms get into the retrofit business
 - *Keystone HELP is managed by the bank AFC First. Quality assurance services and contractor workshops will be managed by the Energy Coordinating Agency (ECA).*

Organized around these two core programs will be a series of supportive activities designed to magnify EnergyWorks’ impact. A coordinated outreach and marketing campaign will inform consumers about the benefits of retrofits and how to obtain them. Robust program assessment and feedback mechanisms will ensure effectiveness of the program and provide raw data for future program design efforts. New strategic partnerships with workforce and technology development organizations will help workers and companies hone their retrofit skills and products.

In short, EnergyWorks will use creative new financial tools to generate a substantial and rapid increase in the amount of retrofit activity in Southeastern Pennsylvania. It will then capitalize on that opportunity to create the true foundations of a sustainable retrofit market: educated consumers who understand the benefits of retrofits and seek them out, a trained workforce able to perform retrofits with consistent quality, and companies for which retrofits are a core business activity.

Administration of EnergyWorks will be overseen by a professional staff housed in the Philadelphia Mayor's Office of Sustainability. That staff will include a Communications Manager who will have direct oversight of the contract contemplated in this RFP.

D. Request for Proposals

The City of Philadelphia and its partners are seeking proposals from thoughtful, creative and experienced market and communications firms with significant experience developing brands, creating and executing marketing and communications strategies. Proposals should evidence an ability to distill complex messages into memorable, comprehensible communications.

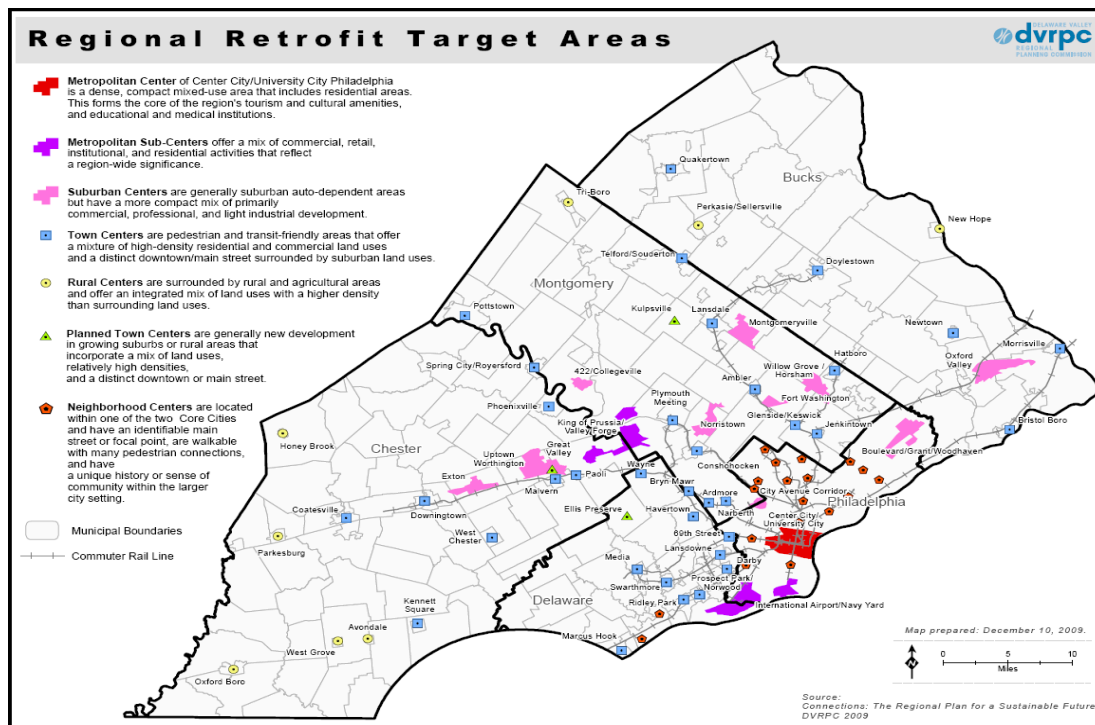
E. General Disclaimer of City

This RFP does not commit the City of Philadelphia to award a contract. This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. No other party, including any Applicant, is intended to be granted any rights hereunder. Any response, including written documents and verbal communication, by any Applicant to this RFP, shall become the property of the City and may be subject to public disclosure by the City, or any authorized agent of the City.

II. Scope of Work

A. Project Details

Objective/Purpose: EnergyWorks will serve the five county area detailed in the map below. Special emphasis will go to driving increases in retrofit activity in the dense urban areas highlighted in color. Loans and grants will not be restricted to buildings located in those areas, and the overall EnergyWorks campaign should reach across the region, but proposals should contemplate approaches to targeting the areas highlighted below for more intense marketing and outreach.



In this context, the marketing and public information campaign will have three objectives.

1. First, the campaign will **increase awareness of EnergyWorks** as a coherent initiative designed to increase retrofit activity across the region and make the regional a national leader in retrofitting. The visibility of the EnergyWorks brand should serve as a driver for increased utilization of the program and reinforce its objectives.
2. Second, the campaign will **increase overall knowledge about energy efficiency retrofitting in the marketplace**. In general, most people who own and manage buildings – from single-family homeowners to large real estate holding firms – have limited understanding of their energy use or the myriad simple and affordable ways to reduce that use. The public information campaign

will make available high quality, easily digestible, and regularly updated information about how to make the region's buildings more energy efficiency. The campaign will target homeowners in particular, who generally have access to less expertise and fewer resources than commercial building owners, but will attempt to make more quality information available to owners of all building types.

3. Third, the campaign will **drive increased utilization of EnergyWorks financings and other retrofit services**. EnergyWorks is not simply a program. It is, in a sense, a non-profit business with a product to sell – retrofits. The campaign should increase the number of home and commercial building owners who choose to retrofit their buildings using the loans, rebates, and other tools EnergyWorks provides.

To the maximum extent feasible, the campaign will reference and leverage other energy efficiency programs available to building owners in the region, including Act 129 incentives provided by PECO and PPL, Commonwealth of PA programs, county and City programs, and other federally-funded programs, as well as other programs of the partner organizations.

The EnergyWorks team is actively seeking creative approaches to communications that do not rely exclusively on standard approaches like broadcast and print advertising. The content and approach of the campaign should reflect the timeliness and vitality of the subject matter – sustainability is a (perhaps *the*) defining contemporary policy issue, and the feel and approach of the campaign should be similarly contemporary.

Timetable: EnergyWorks is funded for a three year period that began in June 2010. All funds in the program must be allocated to specific projects within 18 months and expended by the end of the program period. For this reason, it is anticipated that demand for marketing, outreach, and related communications will be highest in the first year of the program, moderate in the second, and tapering off in the third.

Critically, the partners anticipate publicly launching EnergyWorks at a major press event in early fall. For this reason, two key communications deliverables will be due within 30 days of contract selection: 1) a basic website; and 2) the core elements of a brand/identity. It will be vital to rapidly move to establish basic branding criteria and launch a basic informational website that will direct viewers to simple program information (loan application forms, etc). The vast majority of this information is already available, so the work to create the website will consist mainly of designing a layout and visual style.

Proposals, including staffing plans, budgets, and timelines should be designed with rapid action on these critical components of the communications plan in mind.

Reporting Requirements: The selected firm will be required to develop metrics for assessing the performance of the various components of its strategy, and to provide quarterly reports on those metrics to the Communications Manager. In addition, the selected Applicant will be required to

comply with all relevant ARRA reporting requirements, including but not limited to providing monthly updates on spending, and employee and subcontractor hours worked.

Monitoring: The selected Applicant will be expected to meet regularly with the Communications Manager and other members of the EnergyWorks project team, and to provide regular written progress updates. As this program will be funded through an ARRA grant from the US Department of Energy, the selected Applicant may also be called on to meet with representatives from the Federal government performing monitoring functions.

B. Organizational and Personnel Requirements

Proposals should include a detailed overview of the Applicant's organization(s). This should include:

- Organizational structure: the management, administrative, or technical project staff structure; whether non-profit or for-profit
- Organizational history/experience: years of experience, experience with project of a similar size/scope
- Organizational references
- Technical expertise of personnel: licenses, certifications, years of experience

C. Technology Capabilities

Applicants or their partners must evidence significant capacity to design and implement visually attractive, well organized, and sophisticated websites to be used to distribute significant amounts of complex program information. The selected firm may be called on to develop interactive tools for such a website. For example, the selected firm may be provided with a database of retrofit contractors in the region, and asked to create a tool to allow browsers to find a firm close to their home address.

D. Required Tasks

All work performed by the selected Applicant is to be performed in cooperation with appropriate representatives of the Mayor's Office of Sustainability and under the direction of the Communications Manager for EnergyWorks, or his or her appropriate representative.

The required tasks for this project are:

Branding

- Developing a logo and design standards for EnergyWorks materials.
- Developing a concise set of core messages for all EnergyWorks communications that deliver the essential information about what EnergyWorks is and how it can be valuable to target consumers.

- Ensure that brand is consistent with that of City of Philadelphia's GreenWorks strategy, all relevant efforts by members of the Metropolitan Caucus, and other relevant regional, state, and federal efforts.

Communications Strategy

- Develop a brief (no more than 10 pages) strategy laying out the core elements of the EnergyWorks Public Information and Marketing Campaign. The strategy should include:
 - Key partners and their roles;
 - A target timeline showing how various elements of the campaign would be rolled out to maximize their effectiveness, and **including an early version of a program website (see below for more detail on web strategies) to be available for public viewing and use within 30 calendar days of contract start date;** and
 - The various elements of the campaign (web presence, paid media, earned media) and how they work to reinforce one another.
- Strategy should draw on the selected firm's experience and expertise, but should also include input from the EnergyWorks partners and feedback from 1-3 focus groups of different kinds of building owners (homeowners, commercial building owners, institutional building owners, etc) throughout the region.
- Strategy should contemplate all of the following elements:
 - Earned Media: Earned media should play an important role in marketing EnergyWorks. Earned Media can and should utilize the visibility of the Metropolitan Caucus leaders (the Mayor of Philadelphia and County Commissioners in the surrounding counties) to draw attention to the program.
 - Paid Media: The strategy for paid media should seek to make use of the lowest cost, highest impact strategies.
 - Web Presence: The web strategy *must* include a user-friendly comprehensive informational website with sophisticated background on energy efficiency retrofits for home and business owners, regularly updated resource and content guides, and interactive online tools for engaging building owners in thinking about retrofits. The online strategy *may* include utilization of social networking and other new media outlets as well as online advertising.
 - Direct Outreach: Direct presentations to and meetings with key stakeholders in the target market, such as building owner associations, community groups, associations of non-profits, governments, and schools, etc.

Web and Document Production and Media Placement

The selected firm will be responsible for executing on the strategy they have designed. This includes:

- Web design and integration onto City Servers, as well as regular website updating;
- Materials design and printing (brochures, conference booth materials, banners, etc);
- Purchasing and placement of any paid media spots;

- Placement of earned media spots; and
- Development of direct presentations for key stakeholder groups.

Partner Support

EnergyWorks relies heavily on the support of two kinds of partners – “County Partners” and “Operating Partners.” County Partners are the senior elected officials who make up the Metropolitan Caucus and their designated staffs. “Operating Partners” are the private and non-profit organizations managing the day-to-day delivery of the products EnergyWorks offers.

The County Partners will be the key drivers of media strategies within their jurisdictions, and as such all proposals should explicitly contemplate strategies for working with the County Partners to develop and execute this marketing and public information program.

In addition, several of the Operating Partners will be engaging in their own marketing campaigns – coordinated through the central Communications Manager – designed to “sell” their particular product:

- AFC First will conduct marketing designed to increase utilization of Keystone Loans
- ECA conduct marketing designed to increase utilization of Keystone Loans and the Home Energy Audit Rebate they will be providing. *ECA will also be conducting an extensive public education campaign to teach homeowners more about their energy use and the value of retrofitting.*
- PIDC and TRF will be conducting marketing designed to increase utilization of their Greenworks Loans

The overall structure is like a corporation (EnergyWorks) with subsidiary firms that manage unique product lines (AFC’s product is the Keystone Loan, TRF and PIDC’s product is the Greenworks Loan, etc). The communications and marketing strategy should reflect this structure by supporting these partner efforts. Among the selected firm’s initial duties will be working individually with the County Partners and Program Partners to understand their communications needs and work them into the creation of an overall communications strategy for EnergyWorks.

E. Available Information

Proposers are encouraged to make use of existing studies on compelling language, messages, and strategies for communicating energy efficiency concepts and selling energy efficiency related products.

III. Proposal Format, Content, and Submission Requirements; Selection Process

A. Required Proposal Format

1. Proposal Content: Proposals should contain the following sections:

- (1) Table of Contents.
- (2) Introduction / Executive Summary (No more than 3 pages).
- (3) Proposed Approach and Scope of Work – Describe specifically the method by which the firm intends to meet the stated objectives of the RFP. Please include sample branding concepts as indicated above.
- (4) Proposed Schedule – Describe a proposed schedule for completing the required tasks, including key milestones the firm believes are relevant to the successful execution of the program.
- (5) Proposed Staffing and Organization – Identify a proposed organizational structure for managing the proposed work, as well as specific staffing assignments. The staffing should reflect the actual project leads, not simply the senior leadership of the firm.
- (6) Budget – Provide a proposed budget. The budget should show the cost of each required task (branding, strategy development, media placement, etc.) as well as the components of those costs (staff time, media costs, materials costs, printing, etc.).
- (7) Statement of Qualifications/Relevant Experience – Provide an explanation of the combination of approach and experience that make the firm uniquely qualified for the work described in this RFP.
- (8) Samples/References – Provide samples of relevant work completed for other clients as well as at least two (2) relevant professional references.
- (9) Statement of Financial Capability – Provide evidence that the firm has the financial capacity to meet the requirements of this RFP (for example, that the firm has sufficient operating capital to meet payroll and other expenditures during periods between invoicing and payment.) This section should include the following, as available and relevant:
 - (a) Bank account statement
 - (b) Audited or unaudited financial statements for last three years
 - (c) Bankruptcy filings
- (10) Tax Status and M/WBE Solicitation/ Commitment Forms (Appendices B,C, D)

2. Notice to Applicants to State Requested Exceptions to Contract Terms in Proposal

The City's standard contract terms and conditions for services of the type sought by this contracting opportunity ("Contract Terms") are set forth in the General Provisions appearing on eContract Philly with this RFP and attached to this RFP as an appendix. By submitting a proposal in response to this contract opportunity, the Applicant agrees that, except as provided herein, it will enter into a contract with the City containing substantially the Contract Terms.

Applicants must state clearly and conspicuously any modifications, waivers, objections or exceptions they seek ("Requested Exceptions") to the Contract Terms in a separate section of the proposal entitled "Requested Exceptions to Contract Terms." For each Requested Exception, the Applicant must identify the pertinent Contract Term by caption and section number, state the reasons for the request, and propose alternative language or terms. Requested Exceptions to the City's Contract Terms will be approved only when the City determines in its sole discretion that a Requested Exception makes business sense, does not pose unacceptable risk to the City, and is in the best interest of the City. By submitting its proposal, the Applicant agrees to accept all Contract Terms to which it does not expressly seek a Requested Exception in its proposal. The City reserves the right, in its sole discretion, to evaluate and reject proposals based in part on whether the Applicant's proposal contains Requested Exceptions to Contract Terms, and the number and type of such requests and alternative terms proposed.

If, after the City issues its Notice of Intent to Contract to an Applicant, the Applicant seeks Requested Exceptions to Contract Terms that were not stated in its proposal, the City may, in its sole discretion, deny the Requested Exceptions without consideration or reject the proposal. Failure to enter into a contract on the basis of such new Requested Exceptions shall be grounds for the City to call on any proposal security furnished by the Applicant.

The City reserves the right, in its sole discretion, (i) to waive any failure to comply with the terms of this Notice to Applicants if it determines it is in the best interest of the City to do so; and (ii) to require or negotiate terms and conditions different from and/or additional to the Contract Terms in any final contract resulting from this contract opportunity, without notice to other Applicants and without affording other Applicants any opportunity to revise their proposals based on such different or additional terms.

3. Office of Economic Opportunity Participation

Each Applicant is subject to the provisions of Mayoral Executive Orders 02-05 and 14-08 and is required to respond to the ranges specified in an appendix included with this RFP for participation by Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE") and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") as those terms are defined in Executive Orders 02-05 and 14-08. The City's Antidiscrimination Policy for City

contracts is explained in more detail in an appendix to this RFP. Applicants are required to complete and include in their proposals the “Solicitation for Participation and Commitment Form” which, together with instructions for completion of the form, is also included in the appendix.

4. The Philadelphia Tax Status and Clearance Statement

It is the policy of the City of Philadelphia to ensure that each contractor and subcontractor has all required licenses and permits and is current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation of other regulatory provisions contained in The Philadelphia Code. To assist the City, through its Department of Revenue and Department of Licenses and Inspections, in determining this status, each Applicant is required to complete and return with its proposal, a City of Philadelphia Tax Status and Clearance Statement Form (included with this RFP as an appendix).

If the Applicant is not in compliance with the City’s tax and regulatory codes, an opportunity will be provided to enter into satisfactory arrangements with the City. If satisfactory arrangements cannot be made within a week of being notified of their non-compliance, Applicants will not be eligible for award of the contract contemplated by this RFP.

The selected Applicant will also be required to assist the City in obtaining the above information from its proposed subcontractors (if any). If a proposed subcontractor is not in compliance with City Codes and fails to enter into satisfactory arrangements with the City, the non-compliant subcontractor will be ineligible to participate in the contract contemplated by this RFP and the selected Applicant may find it necessary to replace the non-compliant subcontractor with a compliant subcontractor. Applicants are advised to take these City policies into consideration when entering into their contractual relationships with proposed subcontractors.

If an Applicant or a proposed subcontractor is not currently in compliance with the City’s tax and regulatory codes, please contact the Revenue Department to make arrangement to come into compliance at 215-686-6600 or revenue@phila.gov.

Applicants need not have a City of Philadelphia Business Privilege Tax Account Number and Business Privilege License Number to respond to this RFP, but will, in most circumstances, be required to obtain one or both if selected for award of the contract contemplated by the RFP. Applications for a Business Privilege Tax Account Number or a Business Privilege License¹ may be made online by visiting the City of Philadelphia Business Services Portal at <http://business.phila.gov/Pages/Home.aspx> and clicking on “Register Your Business.” If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to

¹ Business Privilege Licenses are not required for non-profit organizations, however, Business Privilege Tax Account Numbers typically are required.

City of Philadelphia Business Privilege Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Business Privilege License.

5. Disclosure of Litigation

The Applicant shall describe any pending, threatened, or contemplated administrative or judicial proceedings that are material to the Applicant's business or finances including, but not limited to, any litigation, consent orders or agreements between any local, state, or federal regulatory agency and the Applicant or any subcontractor the Applicant intends to use to perform any of the services described in this RFP.

B. Mandatory Online Application Requirements

You must apply online in order to be eligible for award of the non-competitively bid contract opportunity described in this RFP; proposals and any other related documents prepared in response to this RFP will not be considered unless they are filed, within the prescribed time period, through eContract Philly, which can be accessed on the City's website at www.phila.gov/contracts by clicking on eContract Philly. The posting of this RFP on eContract Philly is also referred to as a Notice of Contracting Opportunity.

Applicants and contractors are required to disclose their campaign contributions to local and state political candidates and incumbents; any consultants used in responding to the RFP and contributions those consultants have made; prospective subcontractors; and whether Applicant or any representative of Applicant has received any requests for money or other items of value or advice on particular firms to satisfy minority-, woman- or disabled-owned business participation goals from City employees. This information, as well as a proposal or any other response document required, are part of the online application. For more information, please consult the reference materials found on the website, e-mail econtractphilly@phila.gov or call 215-686-4914.

Applicants who have failed to file complete applications – including using the online disclosure forms provided – through the eContract Philly online application process prior to the closing date and time will not be considered for the contract.

Applicants are encouraged to start and complete their online applications on eContract Philly as early as possible. Please be aware that internet connection speed depends on a variety of factors including: configuration of your computer, configuration of your business or home network, the condition of the wiring at your location, network or internet congestion (available bandwidth). Please prepare and plan accordingly to ensure a timely submission. Your proposal and other application documents will not be considered submitted until you sign the application and click on the "submit" button at the conclusion of the eContract Philly process.

You can begin uploading (or attaching) your proposal and other application materials at any time. It is especially prudent for you to start uploading your attachments earlier if you have a

large number of attachments (e.g. over five documents) or larger-sized attachments (e.g. above 5 MB). Until you sign and submit your application, your materials are not accessible to any staff with the City of Philadelphia. Once you have signed and submitted your application, your application is accessible only to appropriate contract staff within the City of Philadelphia.

C. Selection Process

The City of Philadelphia will base its selection on criteria that will include, but not be limited to:

1. Superior ability or capacity to meet particular requirements of contract
2. Eligibility under Code provisions relating to campaign contributions
3. Superior prior experience of Applicant and staff
4. Superior quality, efficiency and fitness of proposed solution
5. Superior skill and reputation, including timeliness and demonstrable results
6. Special benefit to continuing services of incumbent, such as operational difficulties with transition or needs of population being served
7. Benefit of promoting long-term competitive development and allocation of experience to new or small businesses, including those owned by minority or disabled persons or by women
8. Lower cost
9. Administrative and operational efficiency, requiring less City oversight and administration
10. Anticipated long-term effectiveness
11. Meets prequalification requirements

IV. Proposal Administration

A. Questions Relating to the RFP

All questions concerning this RFP must be submitted in writing via email to Andrew Rachlin at Andrew.M.Rachlin@phila.gov no later than 5pm Friday July 23rd. These responses will be posted on the eContract Philly website with the original RFP details notice. Oral responses by any City employee or agent of the City are not binding and shall not in any way be considered as a commitment by the City.

B. Pre-Proposal Conference

An optional pre-proposal conference will be held on Monday July 26th at 10am on the 18th floor of 1515 Arch St, Philadelphia PA.

C. Interviews/Presentations

The City may choose to interview some or all Applicants after reviewing their written submissions. Costs related to travel to and from and preparation for such interview are the sole responsibility of the Applicant.

D. Term of Contract

The initial term of the contract shall last for twelve months (the “Initial Term”), unless sooner terminated by the City pursuant to the terms of the contract. The City may, at its sole option, amend the Contract to add up to two (2) additional successive one-year terms (“Additional Terms”). Except as may be stated otherwise in such amendment, the terms and conditions of this Contract shall apply throughout each Additional Term.

E. Contract Provisions

The contract shall be subject to the terms outlined in Appendix A (General Terms and Conditions) and Appendix E (Supplemental Terms and Conditions Pertaining to the American Recovery and Reinvestment Act “ARRA”).

V. General Rules Governing RFPs/Proposal; Reservation of Rights; Confidentiality and Public Disclosure

A. Revisions to RFP

The City reserves the right to change, modify or revise the RFP at any time. Any revision to this RFP will be posted on eContract Philly with the original Opportunity Details. It is the Applicant's responsibility to check the eContract Philly website frequently to determine whether additional information has been released or requested.

B. City Employee Conflict Provision

City of Philadelphia employees and officials are prohibited from submitting a proposal in response to this RFP. No proposal will be considered in which a City employee or official has a direct or indirect interest.

C. Proposal Binding

By signing and submitting its proposal, each Applicant agrees that the contents of its proposal are available for establishment of final contractual obligations for a minimum of 180 calendar days from the application deadline for this RFP. An Applicant's refusal to enter into a contract which reflects the terms and conditions of this RFP or the Applicant's proposal may, in the City's sole discretion, result in rejection of Applicant's proposal and shall be grounds for the City to call on any proposal security furnished by the Applicant.

D. Contract Preparation Fee

Pursuant to §17-701 of The Philadelphia Code, the successful Applicant will be required to pay a contract preparation fee; the Department may consider waiving the fee for non-profit corporations upon request. Section 17-701 establishes a fee schedule for contract preparation which is based upon the amount of the contract.

<u>Amount of Contract</u>	<u>Contract Preparation Fee</u>
\$0-\$20,000	\$0
\$20,001-\$50,000	\$120
\$50,001-\$100,000	\$170
\$100,001-\$250,000	\$260
\$250,001-\$500,000	\$340
\$500,001-\$1,000,000	\$520
Over \$1,000,000	\$1,000

E. Reservation of Rights²

By submitting its response to this notice of contract opportunity as posted on the eContract Philly web site (“eContractPhilly”), the Applicant accepts and agrees to this Reservation of Rights. The term “notice of contract opportunity,” as used herein, shall mean this RFP and include all information posted on eContract Philly in relation to this “New Contract Opportunity” as published on eContract Philly, including, without limitation, the information posted for this opportunity on the “Detailed Information for Opportunity” page, in the eContractPhilly “Opportunity List,” including in addition to this RFP, any other document linked to the Detailed Information for Opportunity Page or otherwise displayed on or linked to this notice of contract opportunity.

1. This Notice of Contract Opportunity

The City reserves and may, in its sole discretion, exercise any one or more of the following rights and options with respect to this notice of contract opportunity:

- 1) to reject any and all proposals and to reissue this notice of contract opportunity at any time prior to execution of a final contract;
- 2) to issue a new notice of contract opportunity with terms and conditions substantially different from those set forth in this or a previous notice of contract opportunity;
- 3) to issue a new notice of contract opportunity with terms and conditions that are the same or similar as those set forth in this or a previous notice of contract opportunity in order to obtain additional proposals or for any other reason the City determines to be in the City’s best interest;
- 4) to extend this notice of contract opportunity in order to allow for time to obtain additional proposals prior to the notice of contract opportunity application deadline or for any other reason the City determines to be in the City’s best interest;
- 5) to supplement, amend, substitute or otherwise modify this notice of contract opportunity at any time prior to issuing a notice of intent to contract to one or more Applicants;
- 6) to cancel this notice of contract opportunity at any time prior to the execution of a final contract, whether or not a notice of intent to contract has been issued, with or without issuing, in the City’s sole discretion, a new notice of contract opportunity for the same or similar services;
- 7) to do any of the foregoing without notice to Applicants or others, except such notice as the City, in its sole discretion, elects to post on eContractPhilly.

2. Proposal Selection and Contract Negotiation

The City reserves and may, in its sole discretion, exercise any one or more of the following rights and options with respect to proposal selection:

² The City’s reservation of rights stated in the main text above also appears on the eContract Philly web site where a City solicitation document such as this RFP is referred to as a “notice of contract opportunity.” Therefore the phrase “this notice of contract opportunity” refers to this RFP and any other related documents posted on eContract Philly.

- 1) to reject any proposal if the City, in its sole discretion, determines the proposal is incomplete, deviates from or is not responsive to the requirements of this notice of contract opportunity, does not comply with applicable law (including, without limitation, Chapter 17-1400 of The Philadelphia Code), is conditioned in any way, or contains ambiguities, alterations or items of work not called for by this notice of contract opportunity, or if the City determines it is otherwise in the best interest of the City to reject the proposal;
- 2) to reject any proposal if, in the City's sole judgment, the Applicant has been delinquent or unfaithful in the performance of any contract with the City or with others; is delinquent, and has not made arrangements satisfactory to the City, with respect to the payment of City taxes or taxes collected by the City on behalf of the City of Philadelphia, or other indebtedness owed to the City; is not in compliance with City regulatory codes applicable to Applicant; is financially or technically incapable; or is otherwise not a responsible Applicant;
- 3) to waive any defect or deficiency in any proposal, including, without limitation, those identified in subsections 1) and 2) preceding, if, in the City's sole judgment, the defect or deficiency is not material to the proposal;
- 4) to require, permit or reject, in the City's sole discretion, amendments (including, without limitation, information omitted), modifications, clarifying information, and/or corrections to their proposals by some or all of the Applicants at any time following proposal submission and before the execution of a final contract;
- 5) to issue a notice of intent to contract and/or execute a contract for any or all of the items in any proposal, in whole or in part, as the City, in its sole discretion, determines to be in the City's best interest;
- 6) to enter into negotiations with any one or more Applicants regarding price, scope of services, or any other term of their proposals, and such other contractual terms as the City may require, at any time prior to execution of a final contract, whether or not a notice of intent to contract has been issued to any Applicant and without reissuing this notice of contract opportunity;
- 7) to enter into simultaneous, competitive negotiations with multiple Applicants or to negotiate with individual Applicants, either together or in sequence, and to permit or require, as a result of negotiations, the expansion or reduction of the scope of services or changes in any other terms of the submitted proposals, without informing other Applicants of the changes or affording them the opportunity to revise their proposals in light thereof, unless the City, in its sole discretion, determines that doing so is in the City's best interest;
- 8) to discontinue negotiations with any Applicant at any time prior to the execution of a final contract, whether or not a notice of intent to contract has been issued to the Applicant, and to enter into negotiations with any other Applicant, if the City, in its sole discretion, determines it is in the best interest of the City to do so;
- 9) to rescind, at any time prior to the execution of a final contract, any notice of intent to contract issued to an Applicant, and to issue or not issue a notice of intent to contract to the same or a different Applicant and enter into negotiations with that

Applicant, if the City, in its sole discretion, determines it is in the best interest of the City to do so;

- 10) to elect not to enter into any contract with any Applicant, whether or not a notice of Intent to Contract has been issued and with or without the reissuing this notice of contract opportunity, if the City determines that it is in the City's best interest to do so;
- 11) to require any one or more Applicants to make one or more presentations to the City at the City's offices or other location as determined by the City, at the Applicant's sole cost and expense, addressing the Applicant's proposal and its ability to achieve the objectives of this notice of contract opportunity;
- 12) to conduct on-site investigations of the facilities of any one or more Applicants (or the facilities where the Applicant performs its services);
- 13) to inspect and otherwise investigate projects performed by the Applicant, whether or not referenced in the proposal, with or without consent of or notice to the Applicant;
- 14) to conduct such investigations with respect to the financial, technical, and other qualifications of each Applicant as the City, in its sole discretion, deems necessary or appropriate; and
- 15) to do any of the foregoing without notice to Applicants or others, except such notice as the City, in its sole discretion, elects to post on eContractPhilly.

3. Miscellaneous

- 1) Interpretation; Order of Precedence. In the event of conflict, inconsistency or variance between the terms of this Reservation of Rights and any term, condition or provision contained in any notice of contract opportunity, the terms of this Reservation of Rights shall govern.
- 2) Headings. The headings used in this Reservation of Rights do not in any way define, limit, describe or amplify the provisions of this Reservation of Rights or the scope or intent of the provisions, and are not part of this Reservation of Rights.

F. Confidentiality and Public Disclosure

The successful Applicant shall treat all information obtained from the City which is not generally available to the public as confidential and/or proprietary to the City. The successful Applicant shall exercise all reasonable precautions to prevent any information derived from such sources from being disclosed to any other person. The successful Applicant agrees to indemnify and hold harmless the City, its officials and employees, from and against all liability, demands, claims, suits, losses, damages, causes of action, fines and judgments (including attorney's fees) resulting from any use or disclosure of such confidential and/or proprietary information by the successful Applicant or any person acquiring such information, directly or indirectly, from the successful Applicant.

By submission of a proposal, Applicants acknowledge and agree that the City, as a municipal corporation, is subject to state and local public disclosure laws and, as such, is legally obligated to disclose to the public documents, including proposals, to the extent required thereunder.

Without limiting the foregoing sentence, the City's legal obligations shall not be limited or expanded in any way by an Applicant's assertion of confidentiality and/or proprietary data.

APPENDIX A

General Provisions

See separate PDF for attachment

APPENDIX B

**CITY OF PHILADELPHIA
OFFICE OF ECONOMIC OPPORTUNITY
ANTIDISCRIMINATION POLICY- MINORITY, WOMAN AND DISABLED OWNED BUSINESS
ENTERPRISES
FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS
(NON-COMPETITIVELY BID CONTRACTS)
*Last Revised: May 24, 2010***

Under the authority of Executive Orders No. 02-05 and 14-08, the City of Philadelphia has established an antidiscrimination policy (“Policy”) relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprises in City contracts. Executive Order 14-08 disestablished the Minority Business Enterprise Council and transferred its administrative functions under Executive Order 02-05 to the Office of Economic Opportunity (“OEO”).

The purpose of this Policy is to provide equal opportunity for all businesses and to assure that City funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The City is committed to fostering an environment in which all businesses are free to participate in business opportunities without the impediments of discrimination and participate in all City contracts on an equitable basis. In accordance with the contracting requirements of the City, the City’s antidiscrimination policy is applicable to this Notice of Contracting Opportunity (hereinafter, “NOCO”).³

The Office of Economic Opportunity has approved the following projected ranges of participation for this NOCO which serve as a guide in determining each applicant’s responsibility:

MBE 20%-25%
WBE 20%-25%
DSBE Best Efforts

These ranges represent the percentage of MBE, WBE and/or DSBE (collectively, “M/W/DSBE”) participation that should be attained by M/W/DSBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of certified M/W/DSBEs to perform various elements of the contract. The submission of a Solicitation For Participation and Commitment Form and any supporting

³ The term “Notice of Contracting Opportunity,” shortened to the acronym “NOCO,” refers to the City’s contract solicitation documents and information posted on eContract Philly. Generally, these documents take the form of a Request for Proposals (RFP), Request for Qualifications (RFQ) or Request for Expression of Interest (RFI) and include any other document or information (for example, exhibits, appendices) related to the posting of the new contract opportunity.

documentation (more fully discussed below) is an element of responsiveness to the NOCO and failure to submit the required information will result in rejection of your proposal.

Applicant hereby verifies that all forms, information and documentation submitted to the OEO are true and correct and is notified that the submission of false information by Applicant is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

A. M/W/DSBE PARTICIPATION

1. Only firms that are certified by an approved certifying agency⁴ or identified in the OEO Certification Registry at the time of contract award will be credited toward the participation ranges on City contracts. An OEO Certification Registry is maintained by the OEO and is available online at www.phila.gov/OEO/directory. Firms owned and controlled by minority persons, women or disabled persons, which are certified as MBE, WBE, DSBE or DBE by an approved certifying agency may apply to the OEO for listing in its OEO Certification Registry. If applicant or applicant's subcontractor(s) is certified by an approved certifying agency, a copy of that certification should be included with the proposal.

2. No applicant that seeks to meet the participation range(s) for participation by entering into subcontracts with any M/W/DSBE subcontractor shall be considered to meet the range(s) if the M/W/DSBE subcontractor does not perform a commercially acceptable function ("CAF"). A M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with the NOCO), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved. The OEO may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF. If it is determined during the review of your Solicitation and Commitment Form that the work described on the Form does not constitute a CAF, your proposal may be rejected.

3. 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. Applicants will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

4. An MBE/WBE/DSBE submitting as the prime applicant is required, like all other applicants, to submit a proposal 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

⁴ Approved certifying agencies are identified on the OEO webpage found at www.phila.gov/OEO.

its own work or supply effort on this NOCO. In addition, the participation of an M/W/DSBE partner, as part of a joint venture created for this contract, 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 identified in the OEO Registry prior to contract award;
- 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 planning, staffing and daily management;
- 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).

5. M/W/DSBE subcontractors must perform at least fifty percent (50%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

6. In listing participation commitments on the Solicitation for Participation and Commitment Form, applicants are required to list a detailed description of the work or supply effort, the dollar amount of the quotation, and percentage of the contract the participation represents. In calculating the percentage amount, applicants may apply the standard mathematical rules in rounding off numbers. The OEO reserves the right to request clarifying information from applicants in the event of an inconsistency or ambiguity in the Solicitation For Participation and Commitment Form.

B. RESPONSIVENESS

1. A proposal responsive to the Policy is one which contains documentary evidence of the M/W/DSBEs that have been solicited and that will be used by the applicant on the contract, if awarded; where the proposal satisfies the M/W/DSBE participation ranges for that contract, the applicant is rebuttably presumed not to have discriminated in its selection of contract participants.

2. Applicants must submit documentary evidence of MBE, WBE and DSBEs who have been solicited and with whom commitments have been made in response to the participation ranges included in this NOCO. Failure to submit the Solicitation For Participation and Commitment Form will result in the rejection of the proposal as nonresponsive, although the City, at its sole discretion, may allow applicants to submit or amend the Solicitation For Participation and Commitment Form at any time prior to award. The Solicitation For Participation and Commitment Form must contain the following information:

- Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made on the enclosed document entitled

“Solicitation For Participation and Commitment Form”. Applicants should only make actual solicitations of M/W/DSBEs whose work or materials are within the scope of this NOCO. Mass mailing of a general nature to M/W/DSBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes/subproposals. The applicant’s listing of a commitment with an M/W/DSBE constitutes a representation that the applicant has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City.

- If the applicant has entered into a joint venture with an MBE, WBE and/or DSBE partner, the applicant is also required to submit along with the Solicitation For Participation and Commitment Form, a document entitled “Joint Venture Eligibility Information Form,” available at OEO, for the City’s review and approval of the joint venture arrangement.

3. If Applicant does not fully meet each of the range(s) for participation established for this NOCO, applicant must explain what efforts the applicant made to achieve the M/W/DSBE participation ranges. Applicant must demonstrate, through the submission of documentary evidence, that it took all necessary steps and made reasonable efforts to achieve the M/W/DSBE participation ranges, even if these efforts were not fully successful. OEO will evaluate the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve M/W/DSBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the proposal as nonresponsive, although the City, at its sole discretion, may allow applicants to submit or amend their evidentiary submission at any time prior to award. The submission shall contain and discuss, at a minimum, the following:

- Provide reasons for not committing with any MBE/WBE/DSBEs that submitted a quote/subproposal, regardless of whether the quote/subproposal was solicited by applicant.
- Provide any additional evidence pertinent to applicant's conduct relating to this NOCO including sufficient evidence which demonstrates to the OEO that applicant has not engaged in discriminatory practices in the solicitation of and commitment with contract participants. In describing applicant's efforts to achieve participation within the ranges, applicant may submit any corroborating documentation (e.g., copies of advertisements for participation).

The applicant's documentary evidence will be reviewed by the OEO to ascertain whether discrimination has occurred in the solicitation or selection of contract participants. The review will include consideration of the following:

- Whether the applicant's actions were motivated by considerations of race or gender or disability. The OEO may investigate the applicant's contracting

activities and business practices on similar public and private sector contracts. For example, if applicant rejects any M/W/DSBE based on price, applicant must fully document its reasons for the rejection and also demonstrate that applicant subjects non-M/W/DSBEs to the same pricing standards. OEO will investigate whether there was any attempt at good faith negotiation of price.

- Whether M/W/DSBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the OEO will investigate whether M/W/DSBEs are given the same information, access to the plans and requirements of the contract and given adequate amount of time to prepare a quote/subproposal as others who were solicited by applicant. The OEO will also investigate whether M/W/DSBEs were accorded the same level of outreach as non-M/W/DSBEs, for example whether applicant short listed M/W/DSBEs for participation or solicited M/W/DSBEs at any pre-proposal meetings.
- Whether the applicant's contracting decisions were based upon policies which disparately affect M/W/DSBEs. OEO will ascertain whether applicant selected portions of work or material needs consistent with the capacity of available M/W/DSBE subcontractors and suppliers. OEO will consider whether applicant employed policies which facilitate the participation of M/W/DSBEs on City contracts such as segmentation of the contract or prompt payment practices.

4. After review of the applicant's submission and other information the OEO deems relevant to its evaluation, the OEO will make a written determination that will be forwarded to the awarding City Department.

- If the proposal is determined nonresponsive by the OEO, the applicant will be notified and may file a written appeal with the OEO within forty-eight (48) hours of the date of notification. The decision of the OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Chief Operating Officer of the Commerce Department or his/her designee whose decision shall be final.

C. RESPONSIBILITY

1. Upon award, the completed Solicitation For Participation and Commitment Form and accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs become part of the contract. M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including amendments). Any change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the OEO.

2. The successful applicant shall, within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors the proportionate share of such payment for work performed (including the supply of materials) by

its M/W/DSBE subcontractors. In connection with payment of its M/W/DSBE subcontractors, the successful applicant agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

3. No privity of contract exists between the City and any M/W/DSBE subcontractor identified in any contract resulting from this NOCO. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with the subcontracted services under Executive Orders 2-05 and 14-08 or by reason of any contract resulting from the NOCO except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

4. If the OEO determines that the applicant has discriminated against a M/W/DSBE at any time during the term of the contract, the OEO may recommend to the Director of Finance the imposition of sanctions on the applicant including debarment of the applicant from submitting and/or participating in future City contracts for a period of up to three (3) years.

D. ACCESS TO INFORMATION

1. The OEO shall have the right to make site visits to the applicant's place of business and/or job site and obtain documents and information from any applicant, subcontractor, supplier, manufacturer or contract participant that may be required in order to ascertain applicant's responsiveness and responsibility.

2. Failure to cooperate with the OEO in its review may result in a recommendation to terminate the contract.

E. RECORDS AND REPORTS

1. The successful applicant shall maintain all books and records relating to its M/W/DSBE commitments (e.g. copies of quotations, subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least three (3) years following acceptance of final payment. These records shall be made available for inspection by the OEO and/or other appropriate City officials. The successful applicant agrees to submit reports and other documentation to the OEO as deemed necessary by the OEO to ascertain the successful applicant's fulfillment of its M/W/DSBE commitments.

F. REMEDIES

1. The successful applicant's compliance with the requirements of Executive Orders 2-05 and 14-08, including the fulfillment of any M/W/DSBE commitments, is material to the contract. Any failure to comply with these requirements constitutes a substantial breach of the contract. It is further understood and agreed that in the event the City determines that the successful applicant hereunder has failed to comply with these requirements the City may, in addition to any other rights and remedies the City may have under the contract, any bond filed in connection

therewith or at law or in equity, exercise one or more of the following remedies, as deemed applicable, which shall be deemed cumulative and concurrent:

- a. Withhold payment(s) or any part thereof until corrective action is taken.
- b. Terminate the contract, in whole or in part.
- c. Suspend the successful applicant from proposing/bidding and/or participating in any future City contracts for a period of up to three (3) years.
- d. Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The “total dollar amount of the contract” shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City. For Concessions, the “total dollar amount of the contract” shall mean the Concession Fee paid to the City.)

The remedies enumerated above are for the sole benefit of the City and City’s failure to enforce any provision or the City’s indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City’s rights in connection with any contract resulting from this NOCO nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors.

APPENDIX C

Office of Economic Opportunity Solicitation and Commitment Form

See separate Excel file for Form

APPENDIX D
City of Philadelphia Tax Status and Clearance Statement
For Applicants

**THIS IS A CONFIDENTIAL TAX DOCUMENT
NOT FOR PUBLIC DISCLOSURE**

This form must be completed and returned with Applicant's proposal in order for Applicant to be eligible for award of a contract with the City. Failure to return this form will disqualify Applicant's proposal from further consideration by the Contracting Department. The City of Philadelphia, acting through its Department of Revenue and the Department of Licenses and Inspections, will utilize the information contained in the completed form to review the tax and Philadelphia Code compliance records of the person and/or entity identified below as part of the proposal evaluation process and will report their findings to the Contracting Department and the City's authorized investigatory agents. By signing the certification statement below as Applicant or an authorized representative of Applicant, you represent that Applicant is current and in compliance with, or has made or intends to make satisfactory arrangements with the City to come into compliance with the tax and regulatory provisions of The Philadelphia Code.

Applicant Name		
Contact Name and Title		
Street Address		
City, State, Zip Code		
Phone Number		
Federal Employer Identification Number or Social Security Number:		
Philadelphia Business Privilege Tax Account Number (if none, state "none") ⁵		
Business Privilege License Number (if none, state "none") ⁶		

⁵ To apply for a City of Philadelphia Business Privilege Tax Account Number, please go to <http://business.phila.gov/Pages/Home.aspx> and click on "Register Your Business."

⁶ To apply for a Business Privilege License, please go to <http://business.phila.gov/Pages/Home.aspx> and click on "Obtain a Business Privilege License" or "Register Your Business."

I certify that the Applicant named above has all required licenses and permits and is current or has made satisfactory arrangements with the City to become current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation, or has made satisfactory arrangements to cure any violation, of other regulatory provisions applicable to Applicant contained in The Philadelphia Code.

Authorized Signature

Date

Print Name and Title

APPENDIX E
SUPPLEMENTAL TERMS AND CONDITIONS FOR ARRA FUNDED NON-
COMPETITIVELY BID CONTRACTS

Background

The City of Philadelphia (the “City”) has entered into a certain grant agreement (the “Grant Agreement”) with the Commonwealth of Pennsylvania (the “Commonwealth”) or the federal government to carry out services and/or provide materials specified therein pursuant to the ARRA, as defined herein, subject to certain terms and conditions. This Contract between Provider and the City is funded in whole or in part with funds received by the City under the Grant Agreement, under and subject thereto. In carrying out services and/or providing materials funded with ARRA funds under this Contract, Provider shall comply with all applicable provisions of the Grant Agreement, a copy of which is incorporated herein and made a part hereof by reference, and any Applicable Law(s) referenced therein. Copies of the full Grant Agreement are available upon request. The following terms and conditions shall supplement the General Provisions, as defined herein, and any other Contract Document evidencing this Contract.

1. **Definitions.** The following definitions shall apply to this Addendum:

A. “ARRA” or “Act” means the American Recovery and Reinvestment Act of 2009, Pub. Law 111-5.

B. “ARRA Funds” means funds expended or obligated from appropriations authorized by the ARRA.

C. “Authorized Parties” has the meaning set forth in Paragraph 5 of this Addendum.

D. Capitalized terms not defined in this Addendum shall have the meaning attributed to them in the General Provisions.

2. **Prohibition on Use of ARRA Funds.** Provider acknowledges that it is familiar with the ARRA and the expenditures authorized under that Act to be paid for with ARRA Funds. Provider, for itself and its Subcontractor(s), agrees that no ARRA funds paid to Provider under this Contract shall be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or for any other item, or activity prohibited by the ARRA.

3. **Prohibition Against Misuse of Funds, Dishonest Practices and other Forms of Misconduct.** Provider agrees, for itself and any Subcontractor(s) engaged by Provider, that the following best practices and ethical standards shall govern the performance of work and the provision of any services or materials under this Contract:

(A) All compensation paid under this Contract shall only be used to reimburse for actual, bona fide work, services or materials authorized by, and provided pursuant to this Contract or any Amendment thereto.

(B) All payments made by Provider to any Subcontractor(s) or other entities in any way related to this Contract shall be made only for bona fide services or materials provided in the ordinary course of such Subcontractor's business and shall be supported by invoices and related documentation. Such invoices shall provide sufficient detail to determine the nature, scope or quantity of the services or materials. Subject to prior City approval, Provider may utilize brokers or middle persons to arrange for work, services, supplies, goods, materials or equipment in furtherance of this Contract; however Provider shall not utilize any brokers or middle persons that are not acting in the ordinary course of their bona fide ongoing business concerns in brokering such services or materials. Provider shall inform all Subcontractors and other entities receiving payments under this Contract that such payments will be publicly disclosed and will be subject to possible investigation and audit as provided in Paragraph 5 of this Addendum.

(C) Provider will adhere to the highest standards of ethics, transparency and accountability in the performance of this Contract and will make best efforts to ensure that such standards are upheld by Provider's principals, directors, employees, Subcontractors and agents. Provider will immediately report any suspected acts of fraud, corruption, abuse, conflict of interest, bribery or similar misconduct involving ARRA funds under this Contract to the Inspector General of the City of Philadelphia. By way of illustration and not in limitation of the ethical standards to be upheld in the performance of this Contract, the following are examples of conduct that will be considered in violation of such standards:

- (i) Attempts to bribe City employees or officials;
- (ii) Submission of inflated or otherwise fraudulent invoices;
- (iii) Falsification of any documents or records related to this Contract;
- (iv) Fraud by Contract personnel to gain business advantage;
- (v) Collusive purchasing practices by personnel on this Contract;
- (vi) Theft or embezzlement of City funds by Contract personnel;
- (vii) Use of Contract funds to pay ghost employees or ghost Subcontractors;
- (viii) Provider collusion with City employees or officials;
- (ix) Actions that constitute a false claim under the U.S. False Claims Act, 31 U.S.C. Section 3729 *et seq.*

4. **Reporting Requirements / Maintenance of Records.** Provider understands and acknowledges that the City must comply with all current and future reporting requirements established by the ARRA and the federal or Commonwealth of Pennsylvania agencies having jurisdiction over ARRA Funds. Provider agrees that it will cooperate with the City and provide to the City any data and information necessary to comply with ARRA Section 1512 as well as, in addition, any other information requested by the City.

5. **Investigation, Audit and Access to Records.** Provider acknowledges and agrees that the Commonwealth of Pennsylvania, the United States Comptroller General or representative, the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector

General Act of 1978, the Inspector General of the City of Philadelphia, the Chief Integrity Officer of the City of Philadelphia and/or their designees, or any other person appointed by the Mayor of the City of Philadelphia to a position relating to the promotion and assurance of integrity, ethics, transparency and accountability in the City's contracting process ("Authorized Parties") shall have the same rights of investigation and access to Provider's records as are set forth in the General Provisions pertaining to Provider's obligations to maintain and provide access to contract-related documents. Provider shall fully cooperate with any investigation related to this Contract initiated by any of the Authorized Parties. By way of supplementation and not in limitation of these rights, the investigative, audit and review rights and privileges held by the Authorized Parties in fulfilling their responsibilities to promote integrity in the City's contracting process shall include the following:

(A) Access to any records of Provider, or those of its Subcontractors, and any state or local agency administering this Contract that pertain or relate to this Contract; and

(B) Access to interview any officer, director, employee or agent of the Provider or any of its Subcontractors, at their place of employment or at such other reasonable location as the Authorized Parties shall determine.

6. **Invoice Retention.** In addition to any records retention requirement provided in the General Provisions, Provider shall maintain all invoices related to this Contract for a period of five (5) years following expiration or termination of this Contract. Such invoices shall provide sufficient detail to determine what the Provider has purchased and the scope or quantity of the services or materials. However, if any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the invoices shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the invoices shall be retained for such longer period.

7. **Events of Default.** In addition to Events of Default set forth in the General Provisions, violations of any of the provisions of this Addendum shall constitute an Event of Default entitling the City to pursue, in its sole discretion, the remedies set forth in the General Provisions or such remedies as are available at law or in equity. In addition, misuse of Contract proceeds or other acts in violation of Paragraphs 2, 3, 4 and 5 of this Addendum shall entitle the City to pursue, in its sole discretion, the additional remedies set forth in Paragraph 8 of this Addendum pertaining to the City's recovery of liquidated damages. In the interest of promoting timely compliance with the requirements of the ARRA and protecting the integrity of any investigation initiated by the Authorized Parties, Provider shall not have the opportunity of notice and cure as is otherwise provided under this Contract for violations of the provisions of Paragraphs 2, 3 and 5 of this Addendum.

8. **Liquidated Damages.** In addition to all remedies available to the City under this Contract or at law and in equity, the City shall have the additional remedies provided in this Paragraph in connection with Events of Default for violation of the provisions contained in Paragraphs 2, 3, 4 and 5 of this Addendum. Provider acknowledges that ensuring the use of ARRA Funds in compliance with the ARRA (Paragraphs 2 and 4) and promoting the integrity of the City's contracting process (Paragraphs 3 and 5) are important objectives to the City and that misuse of

proceeds paid to Provider, and any Subcontractor under this Contract, or other improper conduct by Provider, and any Subcontractor, in violation of these provisions, poses a risk of damages incurred by the City that are unpredictable or incapable of precise measurement (for example, loss of future federal and state funds, damage to the City's reputation; damage to the morale of City employees; reduced participation by the business community in City contracts). Therefore, Provider and the City agree that the following calculations of damages shall serve as liquidated damages, and not a penalty, intended as a reasonable forecast of just compensation for which Provider shall be liable to the City for any Event of Default arising under Paragraphs 2, 3, 4 or 5, as the case may be, of this Addendum:

A. If Provider is determined to have made payments or committed acts or omissions in violation of Paragraphs 2, 3, 4 or 5 of this Addendum, then Provider shall pay liquidated damages to the City in the aggregate amount of ten percent (10%) of the amount of compensation authorized under this Contract and any Change Order or Amendment thereto.

B. The amount of liquidated damages due under this Paragraph 8 shall not exceed Fifty Thousand Dollars (\$50,000); except that this limitation shall not apply if the City is determined to be ineligible for future funds by any federal or Commonwealth of Pennsylvania agency having jurisdiction over ARRA Funds, for the failure to meet any ARRA-related obligation, in whole or in part because of Provider's failure to perform its obligations under Paragraphs 2, 3, 4 or 5 of this Addendum.

C. In addition to the payment of liquidated damages provided above, if it is determined that Provider has violated the provisions contained in Paragraph 2, 3, 4 or 5 of this Addendum, Provider shall reimburse the City for the City's costs of any investigation and/or prosecution undertaken or initiated by the Authorized Parties, and shall repay to the City the full amount of funds misused or inadequately documented.

D. In the case of any damages for which Provider is liable under this Paragraph 8, the City may apply the amount of such damages as a credit against pending or future invoices under this Contract, and may declare any such damages not so credited to be immediately due and payable to the City.

9. **Wage Rate Requirements.** Provider agrees that it and any Subcontractors shall comply with ARRA Section 1606 and that, notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA and shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App) and Section 3145 of Title 40, United States Code.

10. **Whistleblower Protection.** Provider agrees that both it and any subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors from discharging, demoting or otherwise discriminating against any employee for disclosures by the

employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract relating to ARRA funds; (2) gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Provider agrees that it and any subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

11. **Current and Future Requirements.** Provider understands and acknowledges that the federal recovery funding process is still evolving and that new requirements for ARRA compliance may be forthcoming from the federal government, the Commonwealth and/or the City. In such event, any such new requirement(s) will automatically become a material part of this Addendum. Provider hereby agrees that both it and any Subcontractors will be bound by and shall comply with all current ARRA requirements, whether or not specifically set forth herein and any such future requirements during the term hereof without the necessity of either party executing any further legal instrument(s).

12. **Required Use of American Iron, Steel and Other Manufactured Goods.** Provider agrees that in accordance with ARRA, Section 1605, neither it nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. This requirement may be waived only by the ARRA granting federal department as set forth in ARRA Section 1605.

13. **Availability of Funding.** Provider acknowledges that Services or Materials supported with temporary federal funds made available by the ARRA will not be continued with Commonwealth of Pennsylvania or City financed appropriations once the temporary ARRA funds are expended.

14. **Effect of this Addendum.** Except as provided by this Addendum, the remaining terms and conditions of this Contract shall be and remain in full force and effect. In the event of any conflict between the terms and conditions stated in this Addendum and the terms and conditions stated elsewhere in this Contract, the terms and conditions stated in this Addendum shall prevail.