

**CITY OF PHILADELPHIA
OFFICE OF ECONOMIC OPPORTUNITY**

**SMALL & LOCAL BUSINESS PLAN
Forms, Instructions and Special Contract Provisions**

RFP - OM&S for PPSB

1. INTRODUCTION

Under the authority of Executive Order No. 06-25, the City of Philadelphia (the “City”) has established a Policy for the City of Philadelphia Small Business Program (the “SBE Policy”) relating to the participation of Small Business Enterprises (“SBE”) in City contracts. The Policy is administered by the Office of Economic Opportunity (“OEO”).

The City is committed to fostering economic opportunity for all and enabling all businesses to compete for City contracts without the impediments of discrimination. The goal of the SBE Policy is to ensure that all purchasing and contracting activities are conducted in a fair and equitable manner with increased emphasis on SBE outreach, solicitation and participation. This includes implementation of effective strategies to document and monitor prime contractors’ compliance with, and commitments to, sub-contract work with SBEs.

The City’s local businesses supply vital goods and services, offer important employment opportunities, and can help to build wealth and innovate commercial change. The City seeks to increase local economic impact by redirecting a greater share of City spending toward local businesses through the Local Business Entity Program (“LBE Program”), administered by the City’s Procurement Department. The LBE Program can generate substantial economic returns through increased local spending.

In furtherance of the goals of Executive Order No. 06-25 and the SBE Policy, this Small & Local Business Plan (“SLBP”) outlines the City’s requirements for the participation of small and local businesses on this particular Project.

Further clarification of OEO’s Small Business Program, along with assistance in completing forms, can be obtained by phone at (215) 683-2071 or by email at oeophila@phila.gov. More information on Procurement’s Local Business Program can be obtained by phone at (215) 686-5940 or by email at LBEcertification@phila.gov.

2. DEFINITIONS

- A. Availability.** The percentage of SBEs and LBEs that are ready, willing, and able to perform specific types of government contracts or procurements, compared to all businesses in the market that are capable of performing the same type of work.
- B. Best and Good Faith Efforts.** Efforts undertaken in good faith in furtherance of the participation goals required under this SLBP and which a reasonable person would perceive to be of a nature and scope likely to achieve such goals, regardless of whether the goals are in fact met.
- C. Certifying Agency.** A recognized certification agency that verifies a business meets specific size and revenue standards. Approved Certifying Agencies are identified on OEO’s website at [Certifying Agencies | Office of Economic Opportunity | City of Philadelphia](#).

- D. **Commercially Acceptable Function.** A business or contractor performs a Commercially Acceptable Function when it is responsible for executing the work of a contract and is carrying out its responsibilities by directly performing, managing, and supervising the work involved. To perform a Commercially Acceptable Function the business or contractor must perform a distinct element of the work required by, and commensurate with the dollar amount set forth for such work in, the contract or subcontract.
- E. **Contract.** The contract awarded by the City for the Project whether as a result of a competitive bid or request for proposals
- F. **Dominant in Its Field of Operation.** A company that holds significant control and influence over their specific industries or markets, allowing them to shape prices, set standards, and operate with minimal competitive pressure.
- G. **Local Business Entity (LBE).** A business that has been certified as a Local Business Entity, consistent with the City's requirements governing eligibility for such certification. More information about the LBE Program can be found on the City's webpage at [Procurement Department | Local Preference](#).
- H. **OEO Registry.** OEO maintains a registry of businesses that have been certified as SBE by a Certifying Agency. Information about OEO's Registry can be found on OEO's website at [OEO Registry | Office of Economic Opportunity | City of Philadelphia](#).
- I. **Participant.** Any SBE or LBE engaged to perform work on the Project either as a prime contractor or as a subcontractor.
- J. **Project.** The work to be completed under the Contract and as defined in **Appendix 1: Participation Range Memo**.
- K. **Respondent.** Any person or entity responding to a City contracting opportunity for the Project, whether by bid or proposal.
- L. **Small Business Enterprise (SBE).** Any for-profit, independently-owned business that is domiciled in the United States that is not Dominant in Its Field, employs one hundred (100) or fewer employees, and earns forty-seven million dollars (\$47,000,000) or less in average annual revenue over a three-year period. SBEs are subdivided into the following tiers according to revenue and employee number criteria, as may be updated from time to time at the sole discretion of the City:
 - 1. **"Micro-Small Business"** is an SBE with one million dollars (\$1,000,000) or less in average annual revenue over a three-year period and has ten (10) or fewer employees.
 - 2. **"Emerging Small Business"** is an SBE with more than one million dollars (\$1,000,000) but less than ten million dollars (\$10,000,000) in average annual revenue over a three-year period and has twenty-five (25) or fewer employees.
 - 3. **"Midsize Business"** is an SBE with more than ten million dollars (\$10,000,000) but less than twenty-three million five hundred thousand dollars (\$23,500,000) in average annual revenue over a three-year period with fifty (50) or fewer employees.
 - 4. **"Macro Business"** is an SBE with more than twenty-three million five hundred thousand dollars (\$23,500,000) but less than forty-seven million dollars (\$47,000,000) in average annual revenue over a three-year period with one hundred (100) or fewer full-time employees.

To account for differences in industry, the City will use the United States Small Business Administration's ("SBA") method of identifying SBEs for industries with high value, low volume products—such as wholesale/distribution/manufacturing firms, and heavy equipment or vehicle sales—by counting employees rather than revenue, to avoid

disqualifying small firms that generate high revenue with minimal staff. This system ensures a fair and consistent method for determining SBE eligibility across industries.

The SBA regularly updates these standards to align with economic conditions, industry trends, inflation, and federal contracting needs. Businesses must identify the correct NAICS code, confirm they meet the applicable size metric, and maintain documentation supporting ownership, control, receipts, and workforce levels.

- M. S/LBE.** An entity that qualifies as both a Small Business Enterprise and Local Business Entity.
- N. Submission.** A Respondent's response to the City contracting opportunity for the Project, whether by bid or proposal.
- O. Utilization.** The percentage of contract dollars awarded to SBEs or LBEs over a given reporting period.

3. SBE PARTICIPATION GOALS & REQUIREMENTS

A. SBE GOALS

OEO has calculated SBE participation goals based upon the Availability of SBEs for the scope of work identified for the Project, the total dollar value of the Project, and an assessment of past performance of similar work. The SBE participation goals for this Project are set forth in **Appendix 1: Participation Range Memo**. If OEO has not set participation ranges, then the Respondent is still required to exercise Best and Good Faith Efforts to include SBEs in its Submission.

These goals represent the level of participation that should be attained by SBEs from business opportunities existing in the available market through the exercise of Best and Good Faith Efforts and in the absence of discrimination in the solicitation.

B. SBE REQUIREMENTS

1. SBE Participant Credit

If Respondent is an SBE and will self-perform work on the Project, the SBE Respondent will be credited for the participation range for its certification category. Participation will be credited to SBE Participants only if the following conditions are met:

- a) SBE Participant is certified by a Certifying Agency at the time of contract award;
- b) SBE Participant is in the OEO Registry at the time of contract award; and
- c) SBE Participant performs a Commercially Acceptable Function.

2. SBE Joint Venture Partner Participation Credit

If an SBE is a partner in a joint venture created for purposes of performing work on the Project, that SBE partner will be credited for the participation ranges only to the extent of the SBE partner's ownership interest in the joint venture and only if the SBE partner meets the following criteria:

- a) SBE partner is certified by a Certifying Agency at the time of contract award;
- b) SBE partner is identified in the OEO Registry at the time of contract award;
- c) SBE partner derives a “substantial benefit” from the Contract;
- d) SBE partner is substantially involved in all phases of the Contract including planning, staffing, and daily management; and
- e) The business arrangement is customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital, and other resources, etc.).

4. LBE PARTICIPATION GOALS & REQUIREMENTS

A. LBE GOALS

The City may calculate LBE or S/LBE participation goals based upon the Availability of LBEs for the scope of work identified for the Project, the total dollar value of the Project, and an assessment of past performance of similar work. If applicable, the LBE participation goals for this Project are set forth in **Appendix 1: Participation Range Memo**.

If the Project does not have participation goals for LBEs, note that the City may consider Respondent’s intent to utilize LBEs when evaluating local impact criteria, if applicable. The City strongly encourages the use of LBEs at all tiers of the Project when feasible.

B. LBE REQUIREMENTS

If Respondent is an LBE and will self-perform work on the Project, the LBE Respondent will be credited for the participation range for its certification category. Participation will be credited to LBE Participants only if the following conditions are met:

- 1. LBE Participant is certified as an LBE by the Procurement Department at the time of contract award; and
- 2. LBE Participant performs a Commercially Acceptable Function.

5. SUBMISSION REQUIREMENTS

A. Responsiveness

- 1. Respondent’s compliance with this SLBP, including the submission of any required forms and supporting documentation, is an element of responsiveness to the contract opportunity for the Project and failure to submit the required forms and documentation may result in rejection of Respondent’s Submission.
- 2. To be deemed responsive, Respondent’s Submission must contain documentary evidence of any Participants that have been solicited and will be used by Respondent on the Contract, if awarded. Documentary evidence must be submitted in accordance with the instructions outlined in this SLBP and in response to each of the participation ranges included in **Appendix 1**, as applicable.

3. After reviewing the Respondent's Submission and any other information OEO deems relevant to its evaluation, OEO will make a written determination as to Respondent's responsiveness that will be forwarded to the awarding City Department. If Respondent is determined non-responsive by OEO, Respondent will be notified and may file a written appeal with the Deputy Director of OEO within forty-eight (48) hours of the date of notification. The decision of the Deputy Director of OEO shall be final.
4. Respondent must verify that all forms, information, and documentation submitted to the City are true and correct and acknowledge that the submission of false information by Respondent is subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, which may include payment of a fine of at least \$1,000 and a term of imprisonment of not more than two years.

B. Solicitation & Participation Form

1. Respondent must complete **Appendix 2: Solicitation & Participation Form** ("S&P Form") to document all solicitations and commitments made by Respondent. A completed S&P Form must be included in Respondent's Submission regardless of whether commitments resulted.
 - a) Respondent should only make actual solicitations of Participants whose services or materials are within the scope of the Project. Mass mailing of a general nature or similar methods to Participants will not be deemed as solicitation but rather will be treated as informational notification only.
 - b) A reasonable period of time should be given to all solicited Participants to ensure there is sufficient time to adequately prepare quotes/subproposals.
 - c) Respondent's listing of a commitment with a Participant constitutes a representation that Respondent has made a legally binding commitment to contract with such Participant upon award of a Contract by the City ("Contract Commitment(s)").
2. Failure to Submit S&P Form. Failure to submit a completed S&P Form may result in rejection of Respondent's Submission as nonresponsive. The City, at its sole discretion, may allow Respondents to submit or amend Submissions at any time prior to award which may result in revision to Respondent's participation commitments.
3. Joint Venture Eligibility Information Form. If Respondent has entered into a joint venture with a partner, Respondent must also submit the "Joint Venture Eligibility Information Form," available by request from OEO, for the City's review and approval of the joint venture arrangement.

C. Best and Good Faith Efforts

1. Respondents are required to use Best and Good Faith Efforts in the solicitation and recruitment of SBE or LBE Participants to work on the Project, even if OEO has not established participation ranges for the Project.
 - a. If Respondent does not fully meet each of the participation goals established for the Project, Respondent must demonstrate that it exercised Best and Good Faith Efforts to achieve the participation goals and submit a written request, on letterhead, for the reduction of part or all of the participation goals ("Request For Reduction/Waiver").

- b. If OEO has not established participation ranges for the Project, Respondent must demonstrate that it exercised Best and Good Faith Efforts to solicit and recruit SBEs and/or LBEs for the Project.
- 2. Respondent's documentary evidence must show that Respondent took all necessary steps and made reasonable efforts to achieve the participation goals or to include SBEs and/or LBEs in the Project, even if these efforts were not fully successful.
- 3. Failure to provide such documentary evidence may result in rejection of the Submission as nonresponsive. The City, at its sole discretion, may allow Respondent to submit or amend its Submission at any time prior to award which may result in revision to Respondent's participation commitments.
- 4. OEO will evaluate the scope, intensity, and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve participation commensurate with the goals range taking into account the Availability of SBEs and LBEs.
- 5. Documentation of Best and Good Faith Efforts undertaken may include, but is not limited to:
 - a) Types and amount of work made available to Participants
 - b) Solicitation of certified Participants
 - c) Any and all quotes received from any Participant and firm selection process notes
 - d) Reasons for not committing with any Participants that submitted a quote/subproposal, regardless of whether the quote/subproposal was solicited by Respondent
 - e) Advertisements for participation
 - f) The extent to which Respondent sought assistance from government agencies to facilitate solicitation of Participants
 - g) Information provided by Respondent to Participants regarding the Project
 - h) Assistance with bonding, financing and resources
 - i) Any additional supporting data and documentation or other relevant information
 - j) Where Respondent intends to perform services itself, without subcontracting, an explanation of the rationale for doing so
- 6. Respondent's documentary evidence will be reviewed by OEO to determine, at its sole discretion, whether Respondent exercised Best and Good Faith Efforts to achieve the Project's participation goals or to include SBEs and/or LBEs in the Project.
- 7. OEO's review may include, without limitation:
 - a) Whether Participants were treated at least as favorably as other businesses in the solicitation and commitment process. For example, OEO may investigate whether

Participants were 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 Respondent.

- b) Whether all eligible Participants were accorded the same level of outreach as other similarly situated Participants and whether Participants received outreach at least as favorable as outreach to non-Participant entities. For example, OEO may investigate whether Respondent short-listed any Participants for participation or solicited any Participants at any pre-proposal meetings.
- c) Whether Respondent's contracting decisions were based upon policies which disparately affect Participants. OEO may consider whether Respondent employs policies which facilitate the participation of Participants on City contracts such as segmentation of the Contract or prompt payment practices.
- d) Whether Respondent's selected portions of work or material needs are consistent with the capacity of available Participant subcontractors and suppliers.

6. SPECIAL CONTRACT PROVISIONS

A. Contract Requirements

1. Contract Documents. This SLBP, including Appendix 1 as applicable, Respondent's completed S&P Form and any accompanying documents regarding the solicitation of and commitments with Participants, shall be considered a part of the Contract and will be expressly incorporated into the Contract upon award. Respondent agrees to provide any additional information and to complete any additional forms required by OEO prior to execution of the Contract.
2. Participant Subcontracts. Upon award of the Contract, the successful Respondent is required to enter into legally binding agreement(s) with Participants ("Participant Subcontract(s)") for the services and in the dollar amount(s) and percentage(s) as so committed pursuant to the Contract Commitment(s).
3. Changes to Contract Commitments. Participation commitments are to be maintained throughout the term of the Contract and shall apply to the total value of the Contract (including any increase/change orders). Any change in Contract Commitments, including but not limited to, substitutions for the listed Participants, changes or reductions in the work to be performed by Participants, and/or listed dollar/percentage amounts to be paid to Participants, must be pre-approved in writing by OEO.
4. Prompt Payment. The successful Respondent is required to pay any Participant subcontractors or suppliers promptly for services performed pursuant to the Contract (including the supply of materials) in an amount of its proportionate share.
5. Reports. On a monthly basis, the successful Respondent shall submit to OEO all required information, including but not limited to Participant data, certified payroll, and demographic data. When applicable, the successful Respondent shall submit workforce demographic data to the City's Labor Standards Unit ("LSU") in accordance with LSU's requirements.
6. Electronic Payment Systems. In connection with the payment of Participants, the successful Respondent is required to use the City's electronic systems for payment verification (B2GNOW Contract Compliance Reporting System) and certified payrolls (LCP Tracker) and/or any successor systems as may be determined by the City from time to

time. Participants are required to verify receipt of payment in said systems. Failure to verify payment or to submit certified payrolls in said system(s) may result in withholding of payment.

7. Access to Information. OEO shall have the right to make site visits to Respondent's place of business and/or job site and obtain documents and information from any Respondent, SBE Participant, subcontractor, supplier, manufacturer or contract participant that may be required in order to ascertain Respondent's responsiveness and responsibility. Failure to cooperate with OEO in its review may result in termination of the Contract.
8. Records. The successful Respondent shall maintain all books and records relating to Participants, Participant Subcontracts, and Contract Commitments (e.g. copies of quotations, subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least five (5) years following expiration of the Contract. These records shall be made available for inspection by OEO and/or other appropriate City officials. The successful Respondent agrees to submit reports and other documentation to OEO as deemed necessary by OEO to ascertain the successful Respondent's fulfillment of its Contract Commitments.

B. Breach and Remedies

1. Breach. Respondent's failure to comply with the requirements of the SBE Policy, this SLBP, its Contract Commitment(s), or any other contract documents constitutes a material breach the Contract. If OEO determines that the Respondent has discriminated against an SBE or LBE at any time during the term of the Contract, OEO may recommend to the Procurement Commissioner the imposition of sanctions and the exercise of remedies.
2. Remedies. Notwithstanding any additional rights or remedies available under the Contract or in law or equity, in the event the City determines that the successful Respondent has failed to comply with any of the requirements of the SBE Policy, this SLBP, or the Contract, including substantial compliance with any Contract Commitment, the City may:
 - a) Debar the successful Respondent from proposing on and/or participating in any future contracts for a period determined by the City not to exceed three (3) years;
 - b) Withhold payment at the sole discretion of the City until corrective action is taken to the satisfaction of the City, in which case such withholding shall not be considered a penalty. If corrective action is not taken, the withheld payment shall serve as liquidated damages for the Respondent's failure to comply with the Contract; and/or
 - c) Terminate the Contract.

The City may exercise any or all remedies set forth in this SLBP, each of which may be pursued separately or in conjunction with any other remedies as the City in its sole discretion shall determine.

3. Sole Benefit of the City. These remedies 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 of any policy, this SLBP, or the Contract, shall not operate as a waiver of any of the City's rights in connection with the Contract nor shall it give rise to actions by any third parties, including identified Participants.

4. No Third-Party Beneficiaries. No privity of contract exists between the City and any Participant identified in any contract awarded for the Project. The City does not intend to give or confer upon any such Participant any legal rights or remedies in connection with subcontracted services pursuant to this SLBP or by reason of any contract awarded for the Project. Nothing herein prevents the Participant from seeking a private cause of action under any legally binding contract to which it may be a party.