

**City of Philadelphia  
Procurement Department**

**Addendum No. 2 Date: March 10, 2016**

**Concession RFP # C-102-16**

**Deadline for Submitting Proposals: March 15, 2016, at 10:30 AM, Local Time**

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**It is the sole responsibility of the Respondent to ensure it has received all addenda to the RFP. The Procurement Commissioner may, in the Commissioner's sole discretion, reject any Proposal for which not all the addenda have been executed and returned.**

**NOTICE**

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**REQUEST FOR PROPOSAL #C-102-16**

**Curtailment Service (CSP) to Provide Access to PJM Sponsored and other Energy and Capacity Curtailment Opportunities for the City of Philadelphia**

**RFP # C-102-16  
IS AMENDED AS FOLLOWS:**

Except as expressly amended by this Addendum No. 2, the RFP is unchanged. Except as otherwise defined in this Addendum No. 2, capitalized words and phrases used in this Addendum No. 1 have the meanings assigned to them in the RFP.

- See Exhibit A attached hereto: Questions and Answers from Vendors regarding the Request for Proposal.

**END OF ADDENDUM TEXT; SIGNATURE PAGE FOLLOWS.**

**ADDENDUM NO. 2**  
**ACKNOWLEDGEMENT OF RECEIPT**

**CITY OF PHILADELPHIA, ENERGY OFFICE, REQUEST FOR PROPOSALS For the  
Curtailment Service Provider (CSP) to Provide Access to PJM Sponsored and other  
Energy and Capacity Curtailment Opportunities for the City of Philadelphia,  
RFP#C-102-16**

I have carefully read Addendum No. 2 to the Request for Proposals for the Curtailment Service Provider (CSP) to Provide Access to PJM Sponsored and other Energy and Capacity Curtailment Opportunities for the City of Philadelphia, and I certify that I have received all pages listed in Addendum No. 2.

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Name of Respondent

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Signature of Respondent's Authorized Official

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Printed Name and Title of Signer

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Date

## Exhibit A: Question and Answers

1. Is there a mandatory pre-bid meeting scheduled?

No

2. As part of the last round of RFP, the city required that real time meters be installed on all sites, the city retain ownership of such meters at the end of the contract period., and meters would be maintained. Please confirm that metering exists at each site the city wishes to include. By site, please provide the manufacturer, and specification of meters on each site, and confirm that all meters are currently operable, and calibrated. Please provide a list of additional meters that the city may own from sites that may be able to participate. Confirm that all sites have KYZ pulses available.

The City does not require real time metering be installed at all sites, however respondents may elect to propose additional equipment or leverage existing equipment at the sites. Metering still exists at approximately 20 sites and the City retains ownership of the equipment. Support and maintenance of any installed equipment or equipment which the respondent intends to use for the performance of its load management programs should be included in the proposal. In addition to the existing equipment, the City has several additional sites which may benefit from metering and participation in load management programs. Coordination of equipment and metering will take place after a contract award, the make and model of the existing metering equipment is not available at this time.

3. PECO has not yet released an RFP for it's the ACT 129 load program. Please explain how the city plans to evaluate offers for a program that currency does not exist, and has not been awarded.

We would expect that the respondent would be prepared to offer assistance or guidance when the program begins. The City will evaluate the potential for participation when the program details are released.

4. Section O pg 8 – Does the 120 day “open period” mean that the City of Philadelphia will not be committing, signing contracts or awarding the RFP prior to the registration deadline for PJM’s 2016-2017 Emergency Capacity Program?

The purpose of this section is allow the City sufficient time to review and evaluate proposals and to enter into a contract. It is not meant to delay that process, but rather to make sure that the commitment from the proposer is firm until a contract is completed. The City intends to expedite the execution of the agreement.

5. Section C pg 10 – If RFP is not awarded with sufficient time allowed for all sites to be assessed and plans developed will the CSP retain the option of non-enrollment of an un-engineered site?

If the City and the CSP do not agree on partial enrollment or estimated enrollment for a site based on historic performance, load, and ability to curtail, then the site could be considered for future enrollment.

6. We request the City of Philadelphia’s total load reduction capabilities during the summer & winter months, and the percentage of load reduction capabilities vs generation, per site

This information is not relevant to preparing a proposal. As disclosed in the Opportunity, the City's load reduction capabilities have varied over the last several years or participation in various load management programs. Previous curtailment capabilities has ranged between 5 and 10 MWs and is driven by a variety of factors including the previous year's use profile and a variety of operational considerations. The City's capabilities will continue to change and respondents need to be able to respond with appropriate programs and services that can accommodate changing capabilities.

**7. Which sites have the capability to utilize an ADR system to carry out their curtailment strategy?**

None.

**8. We request the City of Philadelphia's generator permits for all sites using a generator for demand response**

Currently, the Philadelphia International Airport is the only facility using a generator. That permit will be made available to the successful respondent.

**9. What are the main variables for which the City would pick a winning bidder?**

The primary criteria is listed in the RFP under Section 4F: Award of Concession Agreement.

**10. Please provide the account numbers for all accounts listed in Attachment 6.**

This is not relevant to respond to the RFP. This information will be shared with the qualifying CSP if needed.

**11. Are utility interval meters installed in each of the buildings noted in Attachment 6?**

No. PECO has not installed AMR meters at any large commercial facilities at this time.

**12. Is The City willing to negotiate "City won't pay penalties for non-performance or under performance?" (p5, Section D)**

The City has had curtailment providers for many years and has not yet be subject to penalties in any contract. It has not come to our attention that these contracts were unprofitable or overly risky for the CSPs. However, the City could consider a penalty offset against payments earned provided the City would never be liable for more than the total of payments earned. The City has no funding appropriated for this contract and any penalty framework that the City might consider could never require the City to make an actual payment.

**13. To what extent would you like us to explore the possibility of participation in the Synch Reserves Program (a good program if you can respond in 10 minutes or less – e.g. water treatment plants and centralized chillers tend to be the best candidates) or Economic Demand Response programs? Note that these programs have rolling enrollment and do not have an annual deadline to participate and could be evaluated more in depth later on.**

The City’s experience has been that our facilities are not good candidates for Sync Reserves or Economic Demand Response programs because of our need of response time. If the respondent believes there is a fit for the City in either of these programs, please include in your response.

**14. Can you clarify the EE service mentioned in your RFP? Are their particular services you are looking for in addition to the Energy Intelligence Software services we already provide to the City? How much emphasis would you like us to put on EE in our response?**

PJM offers a permanent load reduction market which can monetize energy efficiency projects as qualified permanent load reduction. The City would be compensated for this permanent load reduction. The City would like to see Respondent solutions to program participation.

**15. Please provide curtailment plans by building from prior year(s)**

These are abbreviated and general guidelines for facilities. More information will be available to the qualifying respondent with regard to specific action for participating facilities and for any agreed upon facility’s actions.

City of Philadelphia - Curran Fromhold Correctional Facility (CFCF)	Shift cooking types, adjust water temp, check set points, and turn off unused equipment
City of Philadelphia - Detention Center	Same as above
City of Philadelphia - Holmesburg Prison	Same as above
City of Philadelphia - House of Corrections / Riverview	Same as above

City of Philadelphia - Philadelphia Industrial Correctional Center (PICC)	Same as above, and also adjusting VFDs in facility
City of Philadelphia - Riverside Correctional Facility	Same as CFCF
City of Philadelphia - City Hall	Check AC set points, adjust Chilled Water loop, reduce elevator and other motor functions as appropriate, and adjust lighting levels.
City of Philadelphia - Criminal Justice Center	Adjust VFDs, Air handling units and pumps, and reducing lighting where appropriate
City of Philadelphia - Municipal Services Building	Same as City Hall
City of Philadelphia - One Parkway Building	Adjust temperature setting for air supply, adjust chiller temperatures, and turn off motors where appropriate.
City of Philadelphia - Philadelphia Zoo	Various measures between the 16 different locations.
City of Philadelphia - Central Library	Pre cooling, adjust HVAC loads, adjust motor use as appropriate, and adjust non-essential lighting.
City of Philadelphia - Art Museum	Adjust temperature levels as appropriate, shutdown none essential loads, adjust lighting and motor loads as appropriate.
Water fund facilities	Various curtailment plans

**16. We request the City of Philadelphia’s nominations and performance per participating site for the past 3-5 years**

Please see question 6.

**17. Please provide a curtailment history for each account over the last 3-5 years.**

Please see question 6.

**18. PJM enrollment deadline for coming delivery year is early May. This bid can be open for up to 120 days. What is the expectation for CSP provider on a decision so enrollment deadline for this delivery year can be met?**

Please see question 5.

**19. The Energy and Capacity RFP- C-102-16 states the following:**

**Each Applicant must seal its Proposal in envelopes, packets, or boxes, as the case may be, to ensure confidentiality of the information prior to the Deadline for Submitting Proposals. A virus-free and fully functioning flash drive or CD-ROM with the entire proposal must also be submitted in the sealed envelope. The City will only accept Proposals in hard copy and will not accept Proposals by facsimile or by e-mail.**

**How many copies do you wish to receive?**

The City would like to receive one (1) hard copy in addition to a flash drive or CD-Rom.

**City of Philadelphia  
Procurement Department**

**Addendum No. 1 Date: February 29, 2016**

**Concession RFP # C-102-16**

**Deadline for Submitting Proposals: March 15, 2016, at 10:30 AM, Local Time**

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**It is the sole responsibility of the Respondent to ensure it has received all addenda to the RFP. The Procurement Commissioner may, in the Commissioner's sole discretion, reject any Proposal for which not all the addenda have been executed and returned.**

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**NOTICE**

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**REQUEST FOR PROPOSAL #C-102-16**

**Curtailment Service (CSP) to Provide Access to PJM Sponsored and other Energy and Capacity Curtailment Opportunities for the City of Philadelphia**

**RFP # C-102-16  
IS AMENDED AS FOLLOWS:**

Except as expressly amended by this Addendum No. 1, the RFP is unchanged. Except as otherwise defined in this Addendum No. 1, capitalized words and phrases used in this Addendum No. 1 have the meanings assigned to them in the RFP.

- Due to the fact that there were a few formatting issues and other several other edits that materially impacted the RFP, the Procurement Dept. has decided to issue an updated RFP. Listed below are the sections and item numbers where changes were made to the RFP and attached is the revised version with the changes incorporated in it.
- The following sections and item numbers had changes made them:
  - Section I. item D. Request for Proposals
  - Section I. item F. Questions Relating to the RFP
  - Section I. item N. Responses to this RFP
  - Section II item G.2 Cost Proposal - deleted
  - Section II item J Alternative Solutions
  - Attachment # 2 Concession Fee Proposal Form



- The deadline for Questions has been extended to Thursday, March 3<sup>rd</sup> at 5:00.

**END OF ADDENDUM TEXT; SIGNATURE PAGE FOLLOWS.**

**ADDENDUM NO. 1**  
**ACKNOWLEDGEMENT OF RECEIPT**

**CITY OF PHILADELPHIA, ENERGY OFFICE, REQUEST FOR PROPOSALS For the  
Curtailment Service Provider (CSP) to Provide Access to PJM Sponsored and other  
Energy and Capacity Curtailment Opportunities for the City of Philadelphia,  
RFP#C-102-16**

I have carefully read Addendum No. 1 to the Request for Proposals for the Curtailment Service Provider (CSP) to Provide Access to PJM Sponsored and other Energy and Capacity Curtailment Opportunities for the City of Philadelphia, and I certify that I have received all pages listed in Addendum No. 1.

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Name of Respondent

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Signature of Respondent's Authorized Official

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Printed Name and Title of Signer

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Date



## **RFP C-102-16**

### **Curtailment Service provider (CSP) to provide access to PJM sponsored and other energy and capacity curtailment opportunities for the City of Philadelphia**

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Issued By:

The City of Philadelphia  
Office of Sustainability  
Christine Knapp, Director

&

Procurement Department  
Trevor J. Day, Acting Commissioner

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**SEALED PROPOSALS WILL BE RECEIVED UNTIL , MARCH 15, 2016  
AT 10:30 A.M. LOCAL TIME (THE "DEADLINE FOR SUBMITTING PROPOSALS")  
AT  
MUNICIPAL SERVICES BUILDING, 1401 JOHN F. KENNEDY BOULEVARD, ROOM 170A,  
PHILADELPHIA, PA 19102  
AND WILL BE OPENED IMMEDIATELY AFTER THE DEADLINE FOR SUBMITTING PROPOSALS**

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Questions regarding this Request for Proposals must be submitted in writing no later than  
**March 2, 2016 at 5:00 p.m. local time ("Deadline for Questions")**

and directed to  
Adam Agalloco, City Energy Manager, Energy Office, Office of Sustainability  
by e-mail at [energy@phila.gov](mailto:energy@phila.gov)

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- Appendix A Office of Economic Opportunity, Antidiscrimination Policy – Minority, Woman and Disabled Owned Business Enterprises
- Appendix A-1 Antidiscrimination Policy and Solicitation for Participation and Commitment Form
- Appendix B City of Philadelphia Tax and Regulatory Status and Clearance Statement
- Appendix C Local Business Entity or Local Impact Certification

**Attachments**

- Attachment 1 Qualification Form
- Attachment 2 Concession Fee Proposal Form
- Attachment 3 Concession Agreement
- Attachment 4 City of Philadelphia-Business, Corporate and Slavery Era Insurance Ordinance
- Attachment 5 Disclosure of Women as Board Members and Executive Staff
- Attachment 6 Facility List

## **I. Project Overview**

### **A. Introduction / Statement of Purpose**

The City of Philadelphia, through its Office of Sustainability and its Procurement Department (collectively, the “City”), requests proposals from one or more qualified Curtailment Service Providers (CSP) to act on behalf of the City of Philadelphia (City) with respect to curtailment opportunities, peak load management, energy efficiency programs, and demand response programs sponsored by the PJM Interconnection, Inc, (PJM) and PECO Energy Company in assisting the City to achieve the maximum benefits offered by such programs.

### **B. Department Overview**

The City of Philadelphia’s Office of Sustainability’s Energy Office manages the City’s PJM-sponsored curtailment, load reduction, and demand response programs. The Department of Public Property, the Department of Commerce’s Division of Aviation, which operates the Philadelphia International Airport, the Department of Parks and Recreation which operates the Free Library, the Philadelphia Prisons System, the Art Museum, and other City departments and agencies, such as the Philadelphia Water Department have participated in the PJM Demand Response program and Peak Load Management for 5 years. The Energy Office will manage the contract and coordinate the CSP’s work with City agencies.

### **C. Project Background**

The City of Philadelphia has earned over \$1.8 M during participation in PJM-sponsored capacity curtailment programs from 2011-2015, including Demand Response Events. Participation included major City owned office buildings, the Philadelphia Prison System, and Philadelphia International Airport. Most currently, the City has 100 MWs of peak usage, and access to between 5 and 10 MWs of curtailment. See Attachment 6 for a list of facilities, PLCs and 2015 commitments. The City has also participated in load reduction benefits provided through PECO and PJM from 2011-2015. The City is aware of the changing marketplace for energy performance programs and City buildings’ challenge to continue to meet Demand Response requirements year over year. It is the City’s intent to select one or more qualified CSPs based on their ability to enable the City to participate in PJM’s curtailment, demand response, energy efficiency, and capacity programs, and inform on any other available programs through PECO or other. The City would like to maximize the value of its curtailment assets, while complying with all PJM, federal, state and local rules and ordinances.

### **D. Request for Proposals**

The City seeks one or more CSPs to act as the agent for the City with respect to PJM curtailment, energy efficiency and demand response programs, as well as provide related necessary service for the City to obtain the maximum benefits offered by these programs. The CSP will be responsible for enrollment, registration, nomination, certification and notification activities; pre-event preparation; managing the City’s response to load management events; post-season analyses and reports; testing; measurement and verification; settlement and payment processing; and ongoing customer service and support. The CSP must understand the PJM curtailment, energy efficiency, load management, and demand response programs, the PJM Reliability Pricing Model (RPM), and the PJM wholesale market rules and operational procedures. A one-year contract may be awarded, with the City at its sole discretion having the

option of issuing up to three additional one-year terms. In addition, the City may, at its sole option amend the Contract to extend the initial term or the additional renewal terms to May 31<sup>st</sup> of the year in which the contract would otherwise terminate in order to extend the contract to the end of the PJM delivery year. Applicants must propose compensation payments for the PJM delivery years ending on May 31, 2017 (the 2016/2017 delivery year), May 31, 2018 (the 2017/2018 delivery year), and May 31 2019 (the 2019/2020 delivery year. The City reserves the right to select multiple CSPs if deemed appropriate for different accounts. The City shall not pay penalties or fees for non-performance or under performance.

**E. General Disclaimer of the City**

This RFP does not commit the City of Philadelphia to award a Concession Agreement. 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.

**F. Questions Relating to the RFP**

The “Project Manager” for this RFP is Adam Agalloco, City Energy Manager, Office of Sustainability. The City Energy Manager can be reached by the following means:

*Email: [Energy@Phila.Gov](mailto:Energy@Phila.Gov)*

Questions must be submitted to the Project Manager in writing, by e-mail, no later than the Deadline for Questions stated on the cover page of this RFP. Questions submitted by telephone will not be answered by the City. The City is not obligated to answer or respond to any questions received after the Deadline for Questions.

The City will answer all questions submitted to the City, and which the City in its sole discretion determines concern a material element of the proposal process or Concession Agreement. The City will provide its answers in writing by an addendum to this RFP prior to the Deadline for Submitting Proposals; and the City will post its answers on the following website: <http://phila.gov/bidsonline/PWBiddingOpportunities.aspx>. The City is not bound by any oral response made by any City employee to any questions.

The addenda issued by the City are the City’s only official method for communicating information to all potential Applicants. Applicants should check <http://phila.gov/bidsonline/PWBiddingOpportunities.aspx> before submitting a Proposal to verify that they have reviewed all the addenda relating to this RFP. Each Applicant must acknowledge in its Proposal that it has reviewed all addenda to this RFP.

**G. Information Not Warranted**

The Office of Sustainability (Department) has provided information and data in this RFP to help potential Respondents understand the purpose of the RFP, and the Concession Agreement, and to help each Respondent prepare a Proposal. The Department believes the information and data are reliable, but the Department does not represent or warrant that the information or data is accurate or complete. The Department encourages each potential Respondent to conduct its own

investigation into any matter of concern to it about this RFP, the Concession Agreement, or its Proposal.

**H. Public Disclosure**

This RFP, each Proposal, the Concession Agreement, and the written documents and communication related to them, may be subject to public disclosure, except as provided in this RFP.

**I. Modifications; Withdrawal of Materials**

Until the applicable Due Date, a Respondent may submit modified Materials to replace all or any portion of Materials the Respondent submitted. The City will only consider the latest version of a Respondent's Materials. The City will not consider or evaluate late Materials or late Modifications. A Respondent may withdraw its Materials from consideration at any time before the applicable Due Date by providing written notification to the City's Acting Procurement Commissioner, Trevor Day.

**J. LATE PROPOSALS**

IT SHALL BE THE RESPONSIBILITY OF THE PROPOSER TO DELIVER THE PROPOSAL AND ALL OTHER REQUIRED ITEMS PRIOR TO 10:30 AM EASTERN STANDARD TIME ON THE DATE LISTED ON THE COVER PAGE. LATER DELIVERY FOR ANY REASON MAY DISQUALIFY THE PROPOSER

**K. Respondents Restricted from applying to Opportunity Statement**

Proposers Restricted as follows:

1. No Proposal will be accepted or selected from, nor will the City enter into any contract negotiations with, any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. No Proposer may be the prime contractor or the Proposer for more than one Proposal, which is submitted pursuant to this RFP. Entities that are legally related to each other or to a common entity may not submit separate Proposals prime contractors or as the prime Proposer. Any Proposal may be rejected that, in the City's sole judgment, does not comply with these conditions.

2. No Proposal will be accepted or selected from, nor will the City enter into any contract negotiations with, any person, firm, or corporation that is in arrears or is in default of any debt to the City (including without limitation tax delinquencies), any contract obligation, or any surety obligations to the City, or has failed to comply with any existing or previous contract with the City, or has failed to execute a contract that the person, firm, or corporation negotiated with the City.



3. No Proposal will be accepted or selected from, nor will the City enter into any contract negotiations with, any Proposer that is involved in litigation against the City, including but not limited to negotiations to settle a claim against the City.

4. No Proposal will be accepted or selected from, nor will the City enter into any contract negotiations with, any Proposer that has been prohibited by the City from entering into any City contracts.

5. If more than one Proposal is received from any individual, firm, partnership, corporation, or association, under the same or different names, said Proposals will not be considered. If an incomplete Proposal is received from any individual, firm, partnership, corporation, or association, said incomplete Proposal will not be considered.

6. All Proposals submitted by Proposers who have engaged in any form of collusion in the preparation or submission of Proposals in response to this RFP shall be rejected.

#### **L. Concession Agreement**

The awarded Concessionaire will be expected to enter into a Concession Agreement with the City of Philadelphia in substantially the form set forth in Attachment 3 to this RFP. This Concession Agreement requires insurance, and indemnification of the City.

#### **M. Term of the Concession Agreement**

The term of the Concession Agreement contemplated by this RFP shall be for one (1) year with three (3) additional one-year options to renew, at the City's sole and absolute discretion. The "Initial Term" of the Concession Agreement will commence on the date all of the conditions set forth in this RFP have been satisfied (the Commencement Date"). The Initial Term will expire at 5:00 p.m. on the date that is one day prior to the one year anniversary of the Commencement Date. The City may, at its sole discretion, renew the Concession Agreement for up to three additional one-year periods (each period a "Renewal Term"). To renew the Concession Agreement, the City must provide written notice to the Concessionaire of the City's desire to renew the agreement ("Renewal Notice") at least sixty (60) days before expiration of the Initial Term or then-current Renewal Term, as the case may be. In the Concession Agreement and this RFP, "Term" means the Initial Term and all Renewal Terms, if any. In the Concession Agreement and this RFP, the date the Concession Agreement expires, is terminated, or otherwise ends, is called the "Concession Agreement Ending Date." Under no circumstances shall any curtailment opportunities awarded through this RFP and any Concession Agreement continue past *one year* without a notice of renewal.

## **N. Responses to this RFP**

1. Responses to this RFP must be submitted in the form of Proposals in accordance with the instructions and requirements in this RFP. Respondents to this RFP are hereafter referred to as “Proposers,” and the successful Proposer is referred to as the “Selected Proposer” or the “Concessionaire.”

2. Acceptance of RFP Terms and Conditions: By submitting a Proposal in response to this RFP, the Proposer expressly acknowledges and agrees to accept and be bound by all terms and conditions set forth in this RFP, unless the Proposer has identified terms and conditions that are unacceptable and has provided the City with alternative terms and conditions in the Proposal. Any such alternatives shall be part of the Proposal evaluation, and the City, in its sole discretion, may determine that such proposed alternative terms and conditions make the Proposal unacceptable.

3. The City, also in its sole discretion, may accept, reject or further negotiate any proposed alternative terms and conditions. The Proposer shall be fully responsible for all costs associated with the development, preparation, transmittal, and submission of any Proposal or material submitted in response to this RFP.

4. Submitted Proposals are Property of City: Any proposal or other materials submitted, or ideas elicited, in response to this RFP, in any form, shall be the sole and absolute property of the City, and the City shall have title thereto and unrestricted use thereof. As such, Proposals submitted to the City in response to this RFP will not be returned to any proposer.

## **O. Duration of Proposals**

In consideration of the City’s evaluation of the submitted proposals, each proposer agrees that its Proposals shall be firm offers to the City to provide access to PJM sponsored and other energy and capacity curtailment opportunities in accordance with this RFP, and shall remain open for review and consideration by the City for a period of at least one hundred and twenty (120) days beginning with the Proposals Submission Due Date set forth in the cover page of this RFP, or as may be revised by addenda issued by the City.

## **II. PROPOSAL SPECIFICATIONS**

### **A. Definitions**

Unless specified otherwise, words, phrases, abbreviations and/or acronyms have the following meanings:

“Compensation Payments” means the payments due from the Provider to the City during the applicable PJM Delivery Year

“DR” means demand response

“ILR” means interruptible load for reliability

“EDC” means electric distribution company

“FERC” means the Federal Energy Regulatory Commission

“PJM” means PJM Interconnection, LLC

“PJM Delivery Year” means the PJM planning period for which resources are being committed and for which constant load obligations for the entire PJM region exist. The year begins June 1 of each year and ends May 31 each year

“CSP” means Curtailment Service Provider

“PECO” means the City of Philadelphia’s electric distribution company

“RPM” means reliability pricing model

“LSE” means load serving entity

“EE” means energy efficiency

“ELRP” means emergency load response program

“PUC” means Public Utility Commission

## **B. Project Details**

The Applicant’s proposed scope of work should address each objective specifically and describe in detail how the Applicant will achieve the objective, or how the Applicant will enable the Department to achieve the objective. See Section 1C for information on the City’s historic participation and performance in Demand Response.

This *Section II, Scope of Work* states requirements for the project, including the services and the tangible work products to be delivered, and the tasks the Energy Office has identified as necessary to meet those requirements. The Energy Office reserves the right, however, to modify specific requirements, based on changed circumstances (such as a change in business or technical environments), the proposal selection process, and contract negotiations with the Applicant(s) selected for negotiations, and to do so with or without issuing a revised RFP. The Applicant must provide in its proposal a detailed proposed scope of work showing how it will meet the project requirements stated in this Section II.

The Department’s objectives for this project include the following:

- The City seeks one or more qualified CSPs to act as the City’s agent for PJM or PECO-sponsored curtailment, energy efficiency, peak and permanent load reduction, and demand response programs as well as provide other necessary services for the City to achieve the maximum benefits offered by such programs run by either agency.
- The City intends to participate in the PJM load management programs as an Interruptible Load for Reliability (ILR) Resource and/or Demand Resource (DR) during the 2016/2017 delivery year with qualifying facilities.
- The City may also participate as an Energy Efficiency (EE) Resource during the 2016/2017 delivery year if eligible.
- The City may also monetize permanent load reductions as realized through PECO or PJM programs.
- The City may decide to participate in load management programs as a DR and/or EE Resource, as well as in the Economic Load Response Program (ELRP) and any other

PJM or PECO program available that will monetize energy efficiency and load reduction.

- The City shall not pay penalties or fees for non-performance or under performance.

### **C. Services and Tangible Work Products.**

#### **1. Services.**

The Energy Office requires at least the services listed below, including the specific tasks and work activities described. Applicant's proposed scope of work should state in detail how it will carry out each task, including the personnel/job titles (as identified in Section H, *Organizational and Personnel Requirements*) responsible for completing the task. For each service specified, the Applicant should propose criteria to determine when the tasks comprising the service are satisfactorily completed. Applicants may propose additional or revised tasks and activities, but should explain why each is necessary to achieve the project objectives.

#### **a. Enrollment, Registration, Nomination, Certification and Notification.**

The CSP will be responsible for all enrollment, registration, nomination, certification and notification activities necessary for the City to participate in the PJM or PECO load management programs selected by the City.

#### **b. Pre-event preparation and reports.**

The CSP shall conduct site surveys of the facilities selected by the City for the PJM or PECO sponsored programs as well as review other city owned facilities that may prove to be candidates for curtailment, provide engineering and other assistance to the City in evaluating curtailment options, and advise the City regarding the demand response potential or load management plan for the selected facility accounts.

#### **c. Load Management Events.**

(1) The CSP will provide timely notification to the City of the start and end times of all PJM or PECO initiated load management events.

(2) The CSP will manage the City's response to PJM or PECO initiated load management events.

(3) The CSP will provide coaching of performance during PJM or PECO initiated load management events, including determining best earning/savings options, especially during PLC predicted hours, as necessary.

#### **d. Testing.**

The CSP shall assist the City with periodic testing of notification systems, demand response procedures, and load management resources.

#### **e. Measurement and Verification.**

The CSP will be responsible for preparation and submission of all measurement and verification plans, reports, and the performance of all measurement and verification activities, as required by PJM or PECO to participate in the programs selected by the City as well as ensure compensation payments are processed within one month of final results from PJM .

f. Settlement and Payment Processing.

The CSP will provide settlement calculations, settlement reports, and processing of payments from PJM or PECO on a monthly basis during summer months, and quarterly through the remainder of the year.

g. Ongoing Customer Service and Support.

(1) The CSP will provide the City with data and reports for each participating facility on a web-based platform

(2) The CSP will provide the City with advice and recommendations related to the curtailment and reduction programs, as needed to achieve maximum participation in these programs

(3) The CSP will serve as intermediary between the City and PJM for PJM's curtailment

Programs

(4) The CSP will serve as intermediary between the City and PECO for PECO's Load Management Programs

(5) The CSP will be responsible for ensuring compliance with all applicable PJM rules, including without limitation all PJM manuals, agreements, tariffs, procedures and requirements, and for providing updates to the City as PJM considers impending program rule changes that may affect operations or revenues

(6) The CSP will be responsible for ensuring compliance with all applicable PECO or PUC rules, including without limitation any PECO or PUC manuals, agreements, tariffs, procedures and requirements, and for providing updates to the City as PECO or the PUC considers impending program rule changes that may affect operations or revenues

(7) The CSP will inform and advise of any program changes, additions, deletions, or expansions related to PJM, PECO, or other applicable providers

2. Tangible Work Products

The Energy Office requires completion and delivery of at least the tangible work products listed below. The proposed scope of work should state in detail how the Applicant will produce each work product, including the personnel/job titles (as identified in Section H, *Organizational and Personnel Requirements*), that will be responsible for delivering the work product. For each work product, the Applicant should propose criteria for satisfactory completion and delivery. Applicants may propose additional or revised tangible work products, but should explain why each is necessary to achieve the project objectives.

a. Reporting. The CSP will be required to provide written pre-event and post-event reports containing the data and information identified in Section II E and F.

**D. Monitoring and Security**

The Energy Office will manage the approach to formulating curtailment, load management, or rebate plans with each account, coordinate the CSP's work with other City agencies, and monitor the contract and the CSP's performance under the contract.

By submission of a proposal in response to this RFP, the Applicant agrees that it will comply with all contract monitoring and evaluation activities undertaken by the City of Philadelphia, and with all security policies and requirements of the City.

#### **E. Reporting Requirements**

The successful Applicant shall report to the City of Philadelphia on a regular basis regarding the status of the project and its progress in providing the contracted services and/or products. At a minimum, the successful Applicant shall submit monthly updates detailing building performance, the goals/tasks accomplished, recommendations for maximizing performance, and the associated earnings.

1. The CSP shall provide the City with a report and analysis after September 30<sup>th</sup> and before November 30<sup>th</sup> of each PJM delivery year. This report will include all changes and updates to the items that were included in the pre-event reports.

2. Pre-event preparation and reports.  
The CSP shall conduct site surveys of the facilities selected by the City for the PJM-sponsored programs as well as review other City owned facilities that may prove to be qualifying candidates for curtailment or other programs, provide engineering and other assistance to the City in evaluating curtailment options, and advise the City regarding the demand response potential for the selected facility accounts.

3. The CSP will provide the City with a curtailment analysis and summary report for each building system selected for the curtailment or load management program prior to the beginning (June 1<sup>st</sup>) of each PJM delivery year. The report must include:

- a. Curtailment recommendations for major building systems (HVAC, lighting, etc.);
- b. Information on the approximate energy and capacity reductions per system;
- c. A prioritized listing of the recommendations according to an objective rating system.
- d. An evaluation of the potential adverse impacts of the potential curtailment options on health, safety, property, or the useful life of building systems;
- e. An evaluation of curtailment procedures;
- f. An evaluation of any required metering, data recording and measurement equipment and technology;
- g. Recommendations for achieving the maximum benefit from the selected PJM or PECO curtailment, energy efficiency, or load reduction program(s);

h. Programmatic changes and recommendations for implementation to the City.

4. Post-season analysis and report.

The CSP shall provide the City with a report and analysis after September 30<sup>th</sup> and before November 30<sup>th</sup> of each PJM delivery year. This report will include all changes and updates to the items that were included in the pre-event reports.

#### **F. Specific Performance Standards**

The City expects that the contract resulting from this RFP will include performance and quality standards for the project, including but not limited to the following:

- The CSP shall perform all services at all times in compliance with PJM rules, manuals, agreements, tariffs, procedures and requirements and use commercially reasonable efforts in performing services and the required tasks.

The City reserves the right to reject any item of work that does not meet the Department's minimum standards of performance and quality, or that does not conform to the contract scope of work.

#### **G. Cost Proposal**

Applicants must propose compensation payments (**Attachment 3**) to the City for the City's participation in each of the PJM and PECO capacity curtailment programs, load reduction programs, energy efficiency programs during the 2017/2018, 2018/2019 and 2019/2020 delivery years. There shall be no penalties for non-performance or under performance. The City will not pay the CSP any additional amounts for providing the required services or performing the required tasks. Outline the payments that the City should expect to receive under each of these programs in each of the three delivery years. Applicants should express compensation payments for the PJM, ILR, DR, efficiency, or any other programs in terms of dollars per Megawatt (\$/MW) per facility.

#### **H. Organization and Personnel Requirements**

The proposal must identify all personnel who will perform work on the project, by education level, skill set (described in detail), experience level, and job title. Resumes of all personnel so identified should be included in Applicant's proposal. The Department expects the following with respect to the successful Applicant's organizational structure and personnel:

- The CSP must be a member of PJM and registered with PJM as a Curtailment Service Provider.
- The CSP must have a minimum of four (4) years experience in providing both PJM-sponsored capacity and energy curtailment programs to large electricity consumers, with at least three (3) years of experience serving state, county or municipal Customers.

#### **I. Technology Capabilities**

The CSP must have the capability to provide data and reports for each enrolled facility on a web-based platform.

## **J. Alternative Solutions**

If an Applicant offers options and/or alternative solutions that are not requested in this RFP, the Applicant must provide the following information for each:

- A detailed description of the option/alternative program including, but not limited to, the value to the City that will be unavailable if the option/alternative is not selected;
- If an option/alternative will provide additional revenue from curtailment or related activities, identify the additional Concession fee (or percentage) in Attachment 2;
- If an option/alternative will or may provide additional revenue and no additional Concession fee is listed in Attachment 2, a full explanation of the rationale for not including the Fee must be submitted.

## **III. GENERAL CONTRACT PROVISIONS**

### **A. TAX REQUIREMENTS**

1. Any contractor, vendor of goods, or provider of services, who proposes on and is awarded a contract by the City is subject to Philadelphia's business tax ordinances and regulations. The Concession Agreement is entered into in the City of Philadelphia, and the Concessionaire's delivery of goods into the City, or performance of services in the City, is "doing business" in the City and subjects the Concessionaire to the City's tax requirements, including without limitation one or more of the following taxes:

- Business Income and Receipt Taxes
- Net Profits Tax
- City Wage Tax

2. Promptly following the Commencement Date, the Concessionaire, if not already paying the taxes listed above, shall apply to the City of Philadelphia Department of Revenue for a tax account number and to file appropriate business tax returns as required by Applicable Law. Applications may be submitted to the Department of Revenue at: Municipal Services Building, Public Service Concourse, 1401 John F. Kennedy Blvd., Philadelphia, PA 19102. Questions about the application and the taxes should be directed to the Taxpayer Service Unit at: (215) 686-6600.

### **B. City of Philadelphia-Business, Corporate and Slavery Era Insurance Ordinance**

A Business Entity entering into a Contract with the City of Philadelphia must complete an Affidavit disclosing any and all records of Participation or Investment in, or Profits derived from Slavery, including Slaveholder Insurance Policies, during the Slavery Era. The Business Entity must complete and submit the Affidavit (**Attachment 4**) and any attachments to the City of Philadelphia, Procurement Department. This is required only of the Business Entity actually selected for award of a Contract. It must be done after the Contract or Contract amendment has been executed. Questions regarding the Affidavit may be directed to the Procurement Department Customer Service at [bid.info@phila.gov](mailto:bid.info@phila.gov)



### **C. Northern Ireland, Iran and Sudan**

Section 17-104(2)(b) of The Philadelphia Code prohibits the City from accepting bids from companies that do business in Northern Ireland, unless that business has implemented the fair employment principles embodied in the MacBride Principles. In furtherance of this ordinance, bidder makes the following certification and representations:

1. In accordance with Section 17-104 of the Philadelphia Code, Contractor by execution of this Contract certifies and represents that (i) Contractor (including any parent company, subsidiary, exclusive distributor, or company affiliated with Contractor) does not have, and will not have at any time during the term of this Contract (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland, and (ii) no product to be provided to the City under this Contract will originate in Northern Ireland, unless Contractor has implemented the fair employment principles embodied in the MacBride Principles.

2. In the performance of the Contract, Contractor agrees that it will not utilize any suppliers or subcontractors at any tier (i) who have (or whose parent subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Contractor further agrees to include provisions with this subparagraph (b), with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of the Contract.

3. Contractor also represents that it does not do business in Iran or Sudan, and that no products being delivered pursuant to the Contract were manufactured by an entity doing business in Iran or Sudan, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.

4. Contractor agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Contractor expressly understands and agrees that any false certification or representation and/or any failure to comply with these requirements shall constitute a substantial breach of the Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of the Philadelphia Code) or at equity. In addition, it is understood that false certification or representation is subject to prosecution under 18 Pa.C.S.A. Section 4904.

### **D. Disclosure of Women as Board Members and Executive Staff**

As required by Section 17-104 of The Philadelphia Code entitled "Prerequisites to the Execution of City Contracts," Section 17-104(3) requires bidder to complete and submit the attached form (**Attachment 5**) with its bid. This form should be submitted with bid; however, the City reserves the right to allow bidder to submit this information at any time prior to award of a contract.

#### **E. The Philadelphia Tax and Regulatory Status and Clearance Statement**

It is the policy of the City of Philadelphia to ensure that each Concessionaire 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 submit with its proposal the certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement which is attached to this RFP as (**Appendix B**).

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, Applicants may 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 arrangements to come into compliance at 215-686-6600 or [revenue@phila.gov](mailto:revenue@phila.gov).

Applicants need not have a City of Philadelphia Business Income and Receipts Tax Account Number (formerly Business Privilege Tax Account Number) and Commercial Activity License Number (formerly 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.<sup>1</sup> Applications for a Business Income and Receipts Tax Account Number or a Commercial Activity License<sup>2</sup> may be made on line by visiting the City of Philadelphia Business Services Portal at <http://business.phila.gov/Pages/Home.aspx> and clicking on "Register Now." If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to City of Philadelphia Business Income and Receipts Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Commercial Activity License.

#### **F. Compliance with Philadelphia 21<sup>st</sup> Century Minimum Wage and Benefits Ordinance**

Applicants are advised that any contract awarded pursuant to this RFP is a "Service Contract," and the successful Applicant under such contract is a "Service Contractor," as those terms are

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<sup>1</sup> Applicants that have a Business Privilege Tax Number should use that number, as it is automatically their Commercial Activity License Number, and need not apply for a new Commercial Activity License Number. Similarly, Applicants with a Business Privilege Tax Account Number should use that number as their Business Income and Receipts Tax Account Number.

<sup>2</sup> Commercial Activity Licenses are not typically required for non-profit organizations; however, Business Income and Receipts Tax Account Numbers typically are required.

defined in Chapter 17-1300 of the Philadelphia Code (“Philadelphia 21<sup>st</sup> Century Minimum Wage and Benefits Standard Ordinance”) Any Subcontractor (as defined in the General Provisions attached as an Appendix to this RFP), and any sub-subcontractor at any tier proposed to perform services sought by this RFP, is also a “Service Contractor” for purposes of Chapter 17-1300. If any such Service Contractor (i.e. Applicant and subcontractors at any tier) is also an “Employer,” as that term is defined in Section 17-1302 (more than five employees), and is among the Employers listed in Section 17-1303 of the Code, then during the term of any resulting contract, it is subject to the minimum wage and benefits provisions set forth in Chapter 17-1300 unless it is granted a waiver or partial waiver under Section 17-1304. Absent a waiver, these minimum wage and benefits provisions, which include a minimum hourly wage that is adjusted annually based on the CPI, health care and sick leave benefits, are mandatory and must be provided to Applicant’s employees or the employees of any subcontractor at any tier who perform services related to the City contract resulting from this RFP. Applicants and any subcontractors at any tier proposed by Applicants are strongly encouraged to consult Chapter 17-1300 of the Philadelphia Code,<sup>3</sup> the General Provisions, and the About/Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors links on the eContract Philly home page for further details concerning the applicability of this Chapter to, and obligations it imposes on certain City contractors and subcontractors at any tier. In addition to the enforcement provisions contained in Chapter 17-1300, the successful Applicant’s failure or the failure of any subcontractor at any tier to comply (absent an approved waiver) with the provisions of Chapter 17-1300, or any discrimination or retaliation by the successful Applicant or Applicant’s subcontractors at any tier against any of their employees on account of having claimed a violation of Chapter 17-1300, shall be a material breach of any Service Contract resulting from this RFP. By submitting a proposal in response to this RFP, Applicants acknowledge that they understand, and will comply with the requirements of Chapter 17-1300, and will require the compliance of their subcontractors at any tier if awarded a contract pursuant to this RFP. Applicants further acknowledge that they will notify any subcontractors at any tier proposed to perform services related to this RFP of the requirements of Chapter 17-1300.

## **G. Ethics Requirements**

Any person who offers or gives anything of value to any City official, officer, or employee, the receipt of which violates Executive Order No. 002-04, is subject to sanctions with respect to City contracts. The sanctions may range from disqualification from participation in particular City contract(s), to debarment, depending on the nature of the particular violation. The terms and duration of the sanctions will be pursuant to any rules the Procurement Commissioner promulgates with respect to contracts subject to competitive bidding, or as the Director of Finance promulgates with respect to all other contracts.

## **H. Default Procedures**

1. Any failure by Concessionaire to comply with any provision of the Contract may, in the sole discretion of the City, constitute an event of default. In the event of a default by Concessionaire, City shall give Concessionaire written notice of such default and permit Concessionaire, within a period of five (5) days thereafter, or such additional cure period as City may

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<sup>3</sup> A link to the Philadelphia Code is available on the City’s official web site, [www.phila.gov](http://www.phila.gov). Click on “City Code and Charter,” located to the bottom right of the Welcome page under the box “Transparency.”

authorize, to correct the default; provided, however, that no such notice from City shall be required nor shall City permit any period for cure if the event of default creates an emergency which requires, in City's sole discretion, immediate exercise of City's rights or remedies. After providing such notice and grace, the City may terminate the Contract if Concessionaire, in the City's sole judgment, has failed to satisfactorily cure such default. No extension or indulgence granted to Concessionaire shall operate as a waiver of any of City's rights in connection with the Contract. The right to terminate the Contract shall not be exclusive and is in addition to any other rights or remedies available to City under this Contract, at law or in equity.

2. This Contract may be terminated by City for the convenience of City at any time prior to its expiration, by giving to Concessionaire notice of its intention to terminate the Agreement at least thirty (30) days in advance. The exercise of any such right of termination on the part of the City, shall be without liability against the City for any damage or loss of profit which Concessionaire may suffer by reason of the termination.

3. If the Contract is terminated for any reason, any outstanding Concession Fees and/or Special Events Fees, as well as all other charges, payments, costs, and expenses herein agreed to be paid by the Concessionaire shall be immediately due and payable to City.

#### **IV. PROPOSAL FORMAT, CONTENT, AND SUBMISSION REQUIREMENTS; SELECTION PROCESS**

##### **A. PROPOSAL SUBMISSION REQUIREMENTS**

###### **1. Responsiveness**

To be eligible for award of the Concession Agreement, an Applicant's Proposal must be responsive to this RFP. For its Proposal to be considered responsive to this RFP, an Applicant must follow all the instructions in this RFP and submit all the materials and information required by this RFP.

###### **2. Form of Proposal**

There may be more than one (1) award made for this Concession RFP.

a. Each Applicant's Proposal must follow the format of this RFP. It must be typed on 8-1/2" x 11" paper and marked clearly on the cover page with Applicant's name and clearly refer to this RFP. Pages should be numbered clearly and double sided print. Applicant must not submit Proposals in plastic sleeves or spiral binders. Illustrations may be included. Oversized drawings may be submitted, but they must be accompanied by 8½" x 11" sectionals or reduced to 8 ½" x 11".

b. Each Applicant must seal its Proposal in envelopes, packets, or boxes, as the case may be, to ensure confidentiality of the information prior to the Deadline for Submitting Proposals A virus-free and fully functioning flash drive or CD-ROM with the entire proposal must also be submitted in the sealed envelope. The City will only accept Proposals in hard copy and will not accept Proposals by facsimile or by e-mail.

c. Wherever an Applicant is providing information required by this RFP, the Applicant must identify the information by using the corresponding Section number, Attachment or Form of this RFP that requires the information.

d. Each Applicant's Proposal must include the following (please see below and other provisions of this RFP for a fuller explanation of several of the matters listed):

- Table of Contents
- Introduction/Executive Summary
- Proposal Signature Page
- Signed cover letter
- Description of company profile, organization, and personnel
- Management Experience and Qualifications, and at least three references
- Objections to any RFP requirements, if any
- Completed Solicitation for Participation and Commitment Form
- Financial Information
- Statement of Understanding of the Purpose of this RFP
- Proposed Scope of Work
- Statement of Qualifications; Relevant Experience
- Completed Qualifications Form
- Proposed Subcontractors
- Completed Concession Fee Proposal Form
- Completed Local Business Entity Form
- Completed Business, Corporate, and Slavery Era Insurance Ordinance
- Completed Disclosure of Women as Board Members and Executive Staff
- Completed Tax and Regulatory Status and Clearance Statement Form

**B. Introduction/Executive Summary:**

Provide an overview of the services being sought and proposed scope of services.

1. Applicant Profile:

Provide a narrative description of the Applicant itself, including the following:

- a. Applicant's business identification information, including name, business address, telephone number, website address, and federal taxpayer identification number or federal employer identification number;
- b. Primary contact for the Applicant, including name, job title, address, telephone and fax numbers, and email address;
- c. A description of Applicant's business background, including, if not an individual, Applicant's business organization (corporation, partnership, LLC, for profit or not for profit, etc.), whether registered to do business in Philadelphia and/or Pennsylvania, country and state of business formation, number of years in business, primary mission of business, significant business experience, whether registered as a minority-, woman-, or disabled-owned business or as a disadvantaged business and with which certifying agency, and any other information about Applicant's business organization that Applicant deems pertinent to this RFP.

2. Project Understanding

Provide a brief narrative statement that confirms Applicant’s understanding of, and agreement to provide, the services and/or tangible work products necessary to achieve the objectives of the project that is the subject of this RFP. Applicant shall describe how the Applicant’s business experience will benefit the project.

3. Proposed Scope of Work

Provide a proposed scope of work, including a cost proposal and project timetable (schedule), in accordance with Section II, “Scope of Work,” of this RFP.

4. Statement of Qualifications; Relevant Experience

Provide a statement of qualifications and capability to perform the services sought by this RFP, including a description of relevant experience with projects that are similar in nature, size and scope to that which is the subject of this RFP. If any minimum qualifications for performance are stated in this RFP, Applicant must include a statement confirming that Applicant meets such minimum requirements.

5. References

Provide at least three references, preferably for projects that are similar in type, scope, size and/or value to the work sought by this RFP. If applicable, Applicant should provide references for projects with other municipalities that are similar in size to the City of Philadelphia. For each reference, include the name, address and telephone number of a contact person.

6. Proposed Subcontractors

State the intention to use subcontractors to perform any portion of the work sought by this RFP. For each such subcontractor, provide the name and address of the subcontractor, a description of the work Applicant intends the named subcontractor to provide, and whether the subcontractor can assist with fulfilling goals for inclusion of minority, woman, or disabled-owned businesses or disadvantaged businesses as stated in Appendix B. Note that if subcontractors at any tier may perform services arising directly out of a City contract resulting from this RFP, Applicants must inform them of the City’s minimum wage and benefits requirements and must require them to comply with such requirements.(See Section III.F for more information.)

**C. Submission of Proposal**

Each Applicant must print the following information on the outside of the envelope, packet, or box in which it submits its Proposal:

- Concession RFP #C-102-16
- Applicant’s name and Address
- Identification as “Proposal for Curtailment Service Provider Concessions”
- Proposal Deadline

## **D. Deadline for Submission of Proposal**

Each Applicant must submit its Proposal to the City no later than the Deadline for Submitting Proposals. Each Applicant is solely responsible for delivery of its Proposal on time and to the proper location. The “Deadline for Submitting Proposals” and the location for submitting Proposals are set forth on the cover page of this RFP. Late proposals will not be accepted.

## **E. Evaluation of Proposals**

### **1. Selection Committee**

Those Proposals that the City determines in its sole discretion are responsive to this RFP will be reviewed by a “Selection Committee” comprised of City officials and employees.

### **2. Proposal Evaluation Criteria**

The Selection Committee may ask one or more Applicants to discuss their respective Proposals with the Selection Committee. Discussion may cover any matter related to this RFP or that the City deems relevant to the proposed Concession. The Selection Committee will evaluate Proposals by considering the criteria listed below. No particular order of importance, weighting, or other priority is assigned to these factors or reflected by their order in the list.

## **F. Award of Concession Agreement**

The City will award a Concession Agreement to the Applicants whose proposals the City, in its sole discretion, determines best meets the goals of the City in issuing this RFP and is in the best interest of the City. For that reason, the City may not necessarily award the Concession Agreement to the Applicant offering the highest Concession Fee.

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

1. Superior ability or capacity to meet particular requirements of contract and needs of the City Department and those it serves.
2. Superior prior experience of Applicant and staff
3. Superior quality, efficiency and fitness of proposed solution for City Department
4. Superior skill and reputation, including timeliness and demonstrable results
5. Highest value to the City
6. Administrative and operational efficiency, requiring less City oversight and administration
7. Anticipated long-term cost effectiveness
8. Meets prequalification requirements
9. Applicant’s certification of its Local Business Entity/Local Impact status pursuant to Executive Order 04-12.
10. Financial capacity to perform the services required by the RFP and presented in the Applicant’s Proposal.
11. Any other factors the Selection Committee considers relevant to the evaluation to the Proposal.

## **G. Amendments of Concession Agreement**

The City reserves the right, in its sole discretion, but subject to the Concessionaire's agreement, to amend the Concession Agreement in light of then-prevailing circumstances as a condition to renewing the Concession Agreement.

## **H. Confidential Information**

1. By submission of Materials, each Respondent acknowledges and agrees 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 Materials, 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 a Respondent's assertion of confidentiality and/or proprietary data.

2. If a Respondent chooses to include material of a confidential nature, then the City will exercise reasonable efforts to keep that material confidential to the extent permitted by Applicable Law. The Respondent shall mark confidential material as noted below and must indicate reasons for confidentiality.

3. Each Respondent must identify the pages of its Materials that contain confidential information by prominently marking those pages as explained below. Respondents are reminded that the mere designation of information as confidential does not necessarily make it so under Applicable Laws. The Pennsylvania Right to Know Act may require the City to disclose certain information regardless of whether the Respondent has designated it as confidential. The City recommends that each Respondent confer with legal counsel regarding the disclosure requirements of the Right to Know Act. Respondents should include the following notice in the front of each copy of their Materials:

### **NOTICE**

The information on pages \_\_\_\_\_ of this [pre-qualification information/Proposal], identified by the words "**Confidential Proprietary Information**" in boldface type of at least 12 points in the top right-hand corner of each page, contains proprietary information that the Respondent desires not be disclosed. The Respondent requests that the Confidential Proprietary Information be used only for evaluation of Respondent's [pre-qualification information/Proposal] and not be disclosed to the public, except as may be required by Applicable Law.

## **I. Local Business Entity or Local Impact Certification**

Pursuant to Mayoral Executive Order No. 04 -12, the City Department will, in the selection of the successful Applicant, consider whether that Applicant has certified that either (1) Applicant meets the criteria stated in Section 17-109(3)(b) of the Philadelphia Code<sup>4</sup> to qualify as a Local Business Entity or (2) in the performance of the resulting contract, Applicant will employ City residents, or perform the work in the City. Any Applicant who wishes to demonstrate its eligibility for this consideration shall do so by completing, executing and attaching to its application a completed Local Business Entity or Local Impact Certification, the

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<sup>4</sup> A link to the Philadelphia Code is available on the City's official web site, [www.phila.gov](http://www.phila.gov). Click on "City Code and Charter," located to the bottom right of the welcome page under the box, "Transparency."



form of which is attached to this RFP as **Appendix C**. The Applicant shall then also include in a separate section of the application, labeled “Local Business Entity or Local Impact Certification,” a statement that the Applicant believes it has met the Local Business Entity or Local Impact criteria “as set forth in the attached Local Business Entity or Local Impact Certification.” The City Department shall deem it a positive factor where the Applicant has, in the City’s sole discretion, met the Local Business Entity or Local Impact criteria.

**J. Objections**

In its Proposal, an Applicant may state objections to the requirements of this RFP. Any objections must be stated in a separate section of the Proposal, must identify the specific provisions and language of this RFP that Applicant objects to, must state the reason(s) for each objection, and must propose alternative provisions. By not objecting to a provision and submitting a Proposal in response to this RFP, an Applicant irrevocably agrees that the provision is acceptable to it. The City may, in its sole discretion, evaluate a Proposal, in part, on the number and nature of objections made by the Applicant to the provisions of this RFP. In no event will the City’s selection of a Applicant for further negotiations leading to a Concession Agreement constitute acceptance by the City of any objection or proposed alternative provision set forth in that Applicant’s Proposal.

**K. Office of Economic Opportunity – Participation Commitment/Diversity Reports**

This RFP, which is subject to Executive Order 03-12, requires you to employ “Best and Good Faith Efforts” to include certified minority, woman and disabled businesses (M/W/DSBE) in the project. “Best and Good Faith Efforts” are those efforts, the scope, intensity and appropriateness of which are designed and performed to achieve meaningful participation of M/W/DSBEs in work of this contract. While the OEO is aware of the specialized nature of this project and limited opportunities it presents for subcontracting, Executive Order 03-12 requires that, as a matter of responsiveness, the solicitation of M/W/DSBEs for participation in the project where opportunities exist. The respondent is requested to explore any opportunities that are appropriate in this instance.

Pursuant to Executive Order 03-12, OEO has reviewed the above subject project and has determined that the opportunity ranges for minority, woman and disabled businesses are as follows:

MBE Ranges - Best and Good Faith Efforts

WBE Ranges - Best and Good Faith Efforts

Forms, instructions and special contract provisions which explain the requirements of the Antidiscrimination Policy for City contracts in more detail are included in Appendix A to this RFP. Appendix A-1 includes the “Solicitation for Participation and Commitment Form” which Applicants should complete and return with their proposal if Applicant has solicited and/or made

commitments to use M/W/DSBEs as part of its proposal. M/W/DSBEs are also encouraged to respond directly to this RFP.

## **V. GENERAL RULES GOVERNING RFP/PROPOSALS; RESERVATION OF RIGHTS, CONFIDENTIALTY AND PUBLIC DISCLOSURE**

### **A. City's Right to Inspect**

1. Concessionaire shall keep and make available complete and accurate books of accounts, financial records, and other records (collectively, "**Books and Records**") within the City of Philadelphia relating to the Concessionaire's management and operation of the Concession Stand. The Concessionaire shall maintain its Books and Records in accordance with generally accepted accounting principles consistently applied.

2. The City may inspect and audit all of the Concessionaire's Books and Records and Concessionaire's affairs at all reasonable times at the City's offices, or other place the City may reasonably require.

### **B. Conditions Regarding Proposals**

By submitting a Proposal in response to this RFP, the Applicant acknowledges and agrees to the following conditions relative to its Proposal:

1. The Applicant is fully responsible for all its costs associated with the development, preparation, and submission of its Proposal and all other materials it submits in response to this RFP. The City assumes no contractual or other obligations toward Applicant as a result of the issuance of this RFP, the preparation or submission of a Proposal by applicant, the City's evaluation of Proposals, or the City's selection of Applicant for further negotiations;

2. It is Applicant's responsibility to ensure that its Proposal is complete, accurate, and submitted by the Deadline for Submitting Proposals set forth on the cover page of this RFP; Late proposals will not be accepted. For updates to the RFP, please be sure to monitor: <http://www.phila.gov/bidsonline/PWBiddingOpportunities.aspx>

3. Upon submission, Applicant's Proposal becomes the property of the City and will not be returned to the Applicant;

4. Applicant will promptly permit the City to inspect projects and facilities referred to in Applicant's statement of its Management Experience Qualifications and References;

5. Applicant will promptly provide additional information or more detailed information upon request by the City, including information inadvertently omitted by an Applicant;

6. Applicant will promptly send representatives for interviews with City officials when requested by the City;

7. Applicant's Proposal shall remain open for acceptance by the City and in full effect for at least 120 calendar days from the Deadline for Submitting Proposals set forth on the cover page of this RFP;

8. Applicant may not issue news releases (including, but not limited to, commercial advertising) pertaining to this RFP without prior written approval of the City;

9. Applicant may withdraw or modify its Proposal at any time prior to the Deadline for Submitting Proposals by sending the City a written notice of withdrawal or by submitting the modification in writing, signed in the same manner and by the same person(s) who signed Applicant's initial Proposal, to the address specified on the cover page of this RFP for submitting Proposals.

### **C. Reservation of Rights**

The City reserves, and may in its sole discretion exercise, the following rights and options with respect to the proposal submission, evaluation and selection process under this RFP at any time prior to execution of the Concession Agreement:

1. To reject any Proposal if, in the City's sole discretion, the Proposal is incomplete, the Proposal is not responsive to the requirements of this RFP, the Applicant does not meet the qualifications set forth in the RFP, or it is otherwise in the City's best interest to do so;

2. To reject all Proposals, or to postpone, cancel and reissue the RFP or not reissue the RFP if, in the City's sole judgment, it is in the City's best interest to do so;

3. To supplement, amend, or otherwise modify any section of this RFP at any time prior to selection of one or more Applicants for negotiation;

4. To waive any Proposal informality, defect, or deviation from the requirements of this RFP that, in the sole judgment of the City, is not material to the Proposal;

5. To request that some or all of the Applicant clarify, modify or supplement their respective Proposals, including information inadvertently omitted;

6. To request interviews or oral presentations from one or more Applicant;

7. To request recent financial statements from an Applicant as a means of verifying its capability to meet all the obligations of the Concessionaire;

8. To conduct investigations with respect to the qualifications of each Applicant and call an Applicant's references;

9. To enter into negotiations and discussions with any one or more Applicants regarding any aspect or provision of their Proposals; and

10. To make modifications to the responsibilities of the Concessionaire as set forth in this RFP that, in the City's reasonable discretion, are not material without informing other Applicants or permitting other Applicants to modify their respective Proposals, unless the City,

in its sole discretion, determines that permitting other Applicants to modify their Proposals is in the City’s best interest.

**D. Concession Agreement Effectiveness**

The Concession Agreement will not be binding upon the City, and an Applicant will not become the Concessionaire, until after all of the following have occurred:

1. The Concession Agreement has been executed and delivered by the Respondent;
2. The Concession Agreement has been approved by the City’s legal counsel; and
3. The Concession Agreement has been executed and delivered by the City.

Furthermore, Respondent shall have no right to perform any Services until Respondent has submitted certificates of insurance in accordance with Attachment 3 of this RFP.

**E. Acceptance of the Provisions of this RFP**

By submitting a Proposal in response to this RFP, the Applicant expressly acknowledges and agrees to all the provisions contained in this RFP, including but not limited to the rights reserved by the City.

**F. Contract Preparation Fee**

Pursuant to Section 17-700 of The Philadelphia Code, the Concessionaire will be required to pay a contract preparation fee. Regulations promulgated by the City Solicitor currently establish the following schedule of fees for preparation of the initial contract and subsequent amendments, based upon the amounts involved and whether the successful Respondent is a for-profit or nonprofit entity:

<b>Amount of Contract</b>		<b>Contract Preparation Fee</b>
\$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

In its discretion, the Law Department may grant a full or partial waiver of any of the above fees in exceptional cases for good cause shown, such as violation of a grant covenant. Governmental entities are exempt from the fees. The Law Department reserves the right to collect up to twice the stated fee if extensive negotiation is required to reach a final contract with the successful Respondent.

**G. Non-Indebtedness**

1. By executing the Concession Agreement, Concessionaire certifies, represents, and warrants to the Department that the Concessionaire and its officers, parent company(ies), subsidiary(ies), and affiliate(s), if any, are not currently indebted to the City for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts (collectively “**Indebtedness**”) for which no payment plan satisfactory to the City has been established. The Concessionaire shall not be indebted to the City, and shall prevent its officers, parent company(ies), subsidiary(ies), and affiliate(s), if any, from being indebted to the City, during the Term of the Concession Agreement, for any Indebtedness for which no payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, the Concessionaire’s false certification, misrepresentation, breach of warranty, or breach of its covenants, set forth above in this RFP, may in at the sole discretion of the City, result in the withholding of payments otherwise due from the Concessionaire to the Department in connection with the Concession Agreement and, if the breach or failure is not resolved to the City’s satisfaction within a reasonable time frame specified by the City in writing, may result in the termination of the Concession Agreement for default (in which case the Concessionaire is liable for all excess costs and other damages resulting from the termination).

2. The Concessionaire shall cause each of its Subcontractors (if any) to make a certification to the City similar to that made by the Concessionaire in Section V.G above. The Concessionaire shall include the provisions in Section V.G in each Subcontract under the Concession Agreement, with appropriate adjustment for the name of the Subcontractor.

3. False certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

**The rest of this page is intentionally left blank.**

## **VI. SIGNING OF PROPOSALS**

Each Applicant must sign its Proposal using one of the forms on the following pages as is appropriate for the Applicant's form of business organization. The Proposal must be signed by person(s) authorized to bind the entity submitting the Proposal.

**If Applicant is an INDIVIDUAL, PARTNERSHIP, or JOINT VENTURE, the Applicant must date and sign the RFP here:**

This \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Name of Applicant

\_\_\_\_\_  
Signature of Individual or Authorized Signer

\_\_\_\_\_  
Printed Name and Title of Signer

\_\_\_\_\_  
Additional Authorized Signer (if applicable)

\_\_\_\_\_  
Printed Name & Title of Additional Authorized Signer (if applicable)

\_\_\_\_\_  
Federal Employer Identification Number

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State & Zip Code

**If Applicant is a CORPORATION or LIMITED LIABILITY COMPANY, the Applicant must sign and date the RFP here:**

This \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
**Corporate Name**

\_\_\_\_\_  
**Signature of Authorized Official**

\_\_\_\_\_  
**Printed Name and Title of Signer**

\_\_\_\_\_  
**Additional Authorized Signer (if applicable)**

\_\_\_\_\_  
**Printed Name & Title of Additional Authorized Signer (if applicable)**

\_\_\_\_\_  
**Federal Employer Identification Number**

\_\_\_\_\_  
**Phone Number**

\_\_\_\_\_  
**E-mail Address**

\_\_\_\_\_  
**Street Address**

\_\_\_\_\_  
**City, State, Zip Code**

**APPENDIX A  
CITY OF PHILADELPHIA  
OFFICE OF ECONOMIC OPPORTUNITY  
ANTIDISCRIMINATION POLICY- MINORITY, WOMAN AND DISABLED OWNED  
BUSINESS ENTERPRISES  
FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS  
[CONCESSION]**

Under the authority of Executive Order No. 03-12, 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 03-12 is administered by the City’s 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 Request for Proposals (“RFP”).

The Office of Economic Opportunity has approved the following projected ranges of participation for this RFP which serve as a guide in determining each Respondent’s responsibility and relate to the total dollar amount of the Concession Fee as defined in the RFP:

MBE Best and Good Faith Efforts

WBE Best and Good Faith Efforts

These ranges represent the percentage of MBE and/or WBE (collectively, “M/WBE”) participation that should be attained by M/WBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses and through Respondent’s exercise of Best and Good Faith Efforts. Best and Good Faith Efforts are those efforts, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/WBEs. These ranges are derived from an analysis of factors such as the size and scope of the contract and the availability of certified M/WBEs to perform various elements of the contract. The submission of a Solicitation For Participation and Commitment Form and any supporting documentation (more fully discussed below) is an element of responsiveness to the RFP and failure to submit the required information will result in rejection of your proposal.

Respondent hereby verifies that all forms, information and documentation submitted to OEO are true and correct and is notified 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. Respondent also acknowledges that under 18 Pa.C.S. §4107.2 (a)(4) it is a felony in the third degree, punishable by a term of imprisonment of not more than seven years in addition to



the payment of any fines or restitution, if, under any contract awarded pursuant to this RFP, Respondent fraudulently obtains public moneys reserved for or allocated or available to minority business enterprises or women's business enterprises.

## **A. M/WBE PARTICIPATION**

1. Only firms that are certified by an approved certifying agency<sup>5</sup> and identified in the OEO Certification Registry by 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](http://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.

2. No Respondent that seeks to meet the participation range(s) for participation by entering into a subcontract with any M/WBE participant shall be considered to meet the range(s) if the M/WBE participant does not perform a commercially useful function (“CUF”). An M/WBE performs a Commercially Useful Function when it performs a distinct element of a City Contract (as required by the services to be performed in accordance with the RFP) which is worthy of the dollar amount of the M/WBE Subcontract and the M/WBE carries out its responsibilities by managing and supervising the services involved and actually self-performing at least twenty percent (20%) of the services of the Subcontract with its own employees. For suppliers, an M/WBE performs a Commercially Useful Function when it is responsible for sourcing the material, negotiating price, determining quality and quantity, ordering the material and paying for it from its own funds. Commercial usefulness will be evaluated and determined by the OEO on a proposal by proposal basis as informed by prevailing industry standards and the M/WBE’s NAIC codes. Participation that is not commercially useful will not be counted.

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

4. An MBE/WBE submitting as the prime Respondent is required, like all other Respondents, to submit a proposal that is responsive to the Policy. The M/WBE Respondent will receive credit towards the participation range for its certification category (e.g., MBE range or WBE range). In addition, the participation of an M/WBE 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/WBE partner’s ownership interest in the joint venture in accordance with the following criteria:

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<sup>5</sup> Approved certifying agencies are identified on the OEO webpage found at [www.phila.gov/OEO](http://www.phila.gov/OEO). Respondent is strongly encouraged to search the Pennsylvania Unified Certification Program (“PaUCP”) Directory which offers a robust listing of DBEs; the PaUCP Directory is found at [www.paucp.com](http://www.paucp.com).

- The MBE, WBE or DSBE partner(s) must be identified in the OEO Registry prior to contract award;
- The M/WBE partner(s) must derive substantial benefit from the arrangement;
- The M/WBE 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/WBE Subcontractors must perform at least twenty percent (20%) of the total amount of work to be performed under the Subcontract with their own employees.

6. In listing participation commitments on the Solicitation for Participation and Commitment Form, Respondents are required to list a detailed description of the services or supply effort, the dollar amount of the quotation, and percentage of the Concession Fee the participation represents. In calculating the percentage amount, Respondents may apply the standard mathematical rules in rounding off numbers. The OEO reserves the right to request clarifying information from Respondents 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/WBEs that have been solicited and that will be used by the Respondent on the contract, if awarded; where the proposal satisfies the M/WBE participation ranges for that contract, the Respondent is rebuttably presumed not to have discriminated in its selection of contract participants.

2. Respondents must submit documentary evidence of MBEs and WBEs who have been solicited and with whom commitments have been made in response to each of the participation ranges included in this RFP. 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 Respondents 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”. Respondents should only make actual solicitations of M/WBEs whose services or materials are within the scope of this RFP. Mass mailing of a general nature to M/WBEs 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 Respondent’s listing of a commitment with an M/WBE constitutes a representation that the Respondent has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City (“Contract Commitment”).

- If the Respondent has entered into a joint venture with an MBE and/or WBE

partner, the Respondent 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 Respondent does not fully meet each of the range(s) for participation established for this RFP, Respondent must demonstrate that it exercised Best and Good Faith Efforts to achieve the M/WBE participation ranges along with a written request, on its letterhead, for the reduction of part or all of the M/WBE participation ranges (“Request For Reduction/Waiver”). Respondent, through the submission of documentary evidence must show that Respondent took all necessary steps and made reasonable efforts to achieve the M/WBE 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/WBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the proposal as nonresponsive; the City, at its sole discretion, may allow Respondents to submit or amend their submission at any time prior to award which may result in revision to Respondent’s participation commitments. The submission shall contain and discuss, at a minimum, the following:

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

The Respondent's documentary evidence will be reviewed by the OEO to determine whether Respondent exercised Best and Good Faith Efforts in response to the participation ranges. **Respondent’s expressed desire to self-perform services with its own employees will not excuse Respondent from exercising Best and Good Faith Efforts to include M/WBEs in its proposal and cannot be used as a basis for requesting a reduction or waiver of the participation ranges.** OEO’s review will include consideration of the following:

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

- Whether M/WBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the OEO will investigate whether M/WBEs 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 Respondent. The OEO will also investigate whether M/WBEs were accorded the same level of outreach as non-M/WBEs, for example whether Respondent short listed M/WBEs for participation or solicited M/WBEs at any pre-proposal meetings.

- Whether the Respondent's contracting decisions were based upon policies which

disparately affect M/WBEs. OEO will ascertain whether Respondent selected portions of work or material needs consistent with the capacity of available M/WBE subcontractors and suppliers. OEO will consider whether Respondent employed policies which facilitate the participation of M/WBEs on City contracts such as segmentation of the contract or prompt payment practices.

4. After review of the Respondent'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 Respondent will be notified and may file a written appeal with the Executive Director of OEO within forty-eight (48) hours of the date of notification; the decision of the Executive Director of OEO 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 and the successful Respondent is required to enter into legally binding agreement(s) ("M/WBE Subcontract(s)") with its M/WBE participants for the services and in the dollar amount(s) and percentage(s) as so committed (the "Contract Commitment(s)"). M/WBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total value of the Concession Fee (including any increase in Concession Fee). 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 Respondent is required to pay its M/WBE participants promptly for services performed under the contract (including the supply of materials). In connection with the payment of its M/WBE participants, the successful Respondent agrees to fully comply with the City's electronic payment verification systems.

3. No privity of contract exists between the City and any M/WBE participant identified in any contract resulting from this RFP. The City does not intend to give or confer upon any such M/WBE participant(s) any legal rights or remedies in connection with the subcontracted services pursuant to Executive Order 03-12 or by reason of any contract resulting from the RFP except such rights or remedies that the M/WBE 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 Respondent has discriminated against a M/WBE at any time during the term of the contract, the OEO may recommend to the Director of Finance the imposition of sanctions on the Respondent including debarment of the Respondent 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 Respondent's place of business and/or job site and obtain documents and information from any Respondent, subcontractor, supplier,

manufacturer or contract participant that may be required in order to ascertain Respondent'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 Respondent shall maintain all books and records relating to its M/WBE 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 expiration of the contract. These records shall be made available for inspection by the OEO and/or other appropriate City officials. The successful Respondent agrees to submit reports and other documentation to the OEO as deemed necessary by the OEO to ascertain the successful Respondent's fulfillment of its M/WBE commitments.

#### **F. REMEDIES**

1. The successful Respondent's compliance with the requirements of Executive Order 03-12 is material to the contract. In the event the City determines that the successful Respondent has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract, which includes termination of the Contract, debar successful Respondent from proposing on and/or participating in any future contracts for a maximum period of three (3) years. 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 hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this RFP nor shall it give rise to actions by any third parties including identified M/WBE participants.

APPENDIX A-1

ANTIDISCRIMINATION POLICY SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM  
 Minority (MBE), Woman (WBE), Disabled (DSBE) and Disadvantaged (DBE) Business Enterprises<sup>1</sup>

DEPARTMENT OF COMMERCE  
 OFFICE OF ECONOMIC OPPORTUNITY (OEO)

Bid Number or Proposal Title: Curtailment Service Provider (CSP) to provide access to PJM sponsored and other		Name of Bidder/Proposer:		Bid/RFP Opening Date:	
List below ALL MBE/WBE/DBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.					
Work or Supply Effort to be Performed		Date Solicited By Phone    By Mail		Commitment Made Yes (if Yes, give date)    NO	
Company Name		Date Solicited By Phone    By Mail		Commitment Made Yes (if Yes, give date)    NO	
Address		Quote Received YES?    NO		Amount Committed To Dollar Amount	
Contact Person		YES?    NO		Percent of Total Bid/RFP	
Telephone Number    Fax Number		YES?    NO		\$	
Email Address		YES?    NO		%	
OEO REGISTRY #    CERTIFYING AGENCY		YES?    NO		%	
Work or Supply Effort to be Performed		Date Solicited By Phone    By Mail		Commitment Made Yes (if Yes, give date)    NO	
Company Name		Date Solicited By Phone    By Mail		Commitment Made Yes (if Yes, give date)    NO	
Address		Quote Received YES?    NO		Amount Committed To Dollar Amount	
Contact Person		YES?    NO		Percent of Total Bid/RFP	
Telephone Number    Fax Number		YES?    NO		\$	
Email Address		YES?    NO		%	
OEO REGISTRY #    CERTIFYING AGENCY		YES?    NO		%	
Work or Supply Effort to be Performed		Date Solicited By Phone    By Mail		Commitment Made Yes (if Yes, give date)    NO	
Company Name		Date Solicited By Phone    By Mail		Commitment Made Yes (if Yes, give date)    NO	
Address		Quote Received YES?    NO		Amount Committed To Dollar Amount	
Contact Person		YES?    NO		Percent of Total Bid/RFP	
Telephone Number    Fax Number		YES?    NO		\$	
Email Address		YES?    NO		%	
OEO REGISTRY #    CERTIFYING AGENCY		YES?    NO		%	

1. If Bidder/Proposer makes solicitation(s) and commitment(s) with a DBE, Bidder/Proposer shall indicate which class type, M-DBE or W-DBE, is submitted for credit.  
 2. Attach all quotations to this form.  
 09/2010

## APPENDIX B

### CITY OF PHILADELPHIA TAX AND REGULATORY 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. Please provide the information requested in the table, check the appropriate certification option and sign below:

Applicant Name	
Contact Name and Title	
Street Address	
City, State, Zip Code	
Phone Number	
Federal Employer Identification Number or Social Security Number:	
Philadelphia Business Income and Receipts Tax Account Number (f/k/a Business Privilege Tax) (if none, state "none")*	
Commercial Activity License Number (f/k/a Business Privilege License) (if none, state "none")*	

\_\_\_ 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, or other regulatory provisions applicable to Applicant contained in the Philadelphia Code.

\_\_\_ I certify that the Applicant named above does not currently do business, or otherwise have an economic presence in Philadelphia. If Applicant is awarded a contract with the City, it promptly will take all steps necessary to bring it into compliance with the City's tax and other regulatory requirements.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

\* You can apply for a City of Philadelphia Business Income and Receipts Tax Account Number or a Commercial Activity License on line after you have registered your business on the City's Business Services website located at <http://business.phila.gov/Pages/Home.aspx>. Click on "Register" or "Register Now" to register your business.

**APPENDIX C**

**LOCAL BUSINESS ENTITY OR LOCAL IMPACT CERTIFICATION**

Instructions: Applicants who seek as a positive factor in the City’s consideration of their application that they meet the Local Business Entity or Local Impact criteria as provided in Mayoral Executive Order No. 04-12 should complete this Certification and return it with their application. Applicants providing this Certification should also include in a separate section of their application labeled “Local Business Entity or Local Impact Certification,” a statement that the Applicant believes it has met the Local Business Entity or Local Impact criteria “as set forth in the attached Local Business Entity or Local Impact Certification.” Check all appropriate certification options that are applicable to Applicant and sign below:

**Applicant Name:** \_\_\_\_\_

**Local Business Entity Certification**

\_\_\_ I certify that the Applicant named above is a Local Business Entity because Applicant complies with the following criteria set forth in Section 17-109(3)(b) of the Philadelphia Code:

I. During the preceding 12 months, Applicant has filed a Commercial Activity or Business Privilege tax return with the City establishing that Applicant conducted business within the City within the calendar year preceding the filing of the return; and

II. During the preceding 18 months, Applicant:

A. Has continuously maintained a valid Commercial Activity or Business Privilege License and all other licenses and permits necessary to conduct business with the City;

B. Has continuously occupied an office within the City, where business is conducted; and

C. Satisfies at least one of the following requirements (*Check those applicable to Applicant*):

\_\_\_ (1) More than half of Applicant’s full-time employees work in the City at least 60% of the time;

\_\_\_ (2) More than 50 of Applicant’s full-time employees work in the City at least 60% of the time; or

\_\_\_ (3) Applicant’s principal place of business is located in the City.

**Local Impact Certification**

\_\_\_ I certify that in the performance of a contract resulting from this RFP, the Applicant named above will employ City residents.

\_\_\_ I certify that in the performance of a contract resulting from this RFP, the Applicant will perform the work in the City.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title



**ATTACHMENT 1**

**QUALIFICATION FORM**

**(APPLICANTS MUST FURNISH THE FOLLOWING INFORMATION)**

**1. BUSINESS STRUCTURE**

Name: \_\_\_\_\_  
(Corporation – Partnership – Individual – Trade Name)

Address of Principal Office: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Fed EIN or Social Security Number: \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

**1.1 If the applicant is a partnership, joint venture, please provide the following information:**

Date of Organization: \_\_\_\_\_

Partnership/Joint Venture Recorded? Yes ( ) No ( )

Date: \_\_\_\_\_ Book: \_\_\_\_\_ Page: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_

Name, address and ownership share of each partner/joint venture:

**Name, Address, %**

_____	_____	_____
_____	_____	_____
_____	_____	_____

**a. If Corporation, are you authorized to do business in Pennsylvania?**

Yes ( ) No ( )

**b. If so, insert brief summary of previous experience:**

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

**ATTACHMENT 2**

**CONCESSION FEE PROPOSAL FORM**

**Concession Fee to provide access to P.J.M. and other energy and capacity curtailment opportunities for the City of Philadelphia. Please indicate any other proposed programs and the associated revenue for the City:**

**2016/2017: PJM Demand Response program**

**PJM Permanent Load Reduction Program**

**Other \_\_\_\_\_ %**

**2017/2018: PJM Demand Response Program**

**PECO Demand Response Program**

**PJM Permanent Load Reduction Program**

**\_\_\_\_\_ %**

**2018/2019: PJM Demand Response Program**

**PECO Demand Response Program**

**PJM Permanent Load Reduction Program**

**\_\_\_\_\_ %**

**2019/2020: PJM Demand Response Program**

**PECO Demand Response Program**

**PJM Permanent Load Reduction Program**

**\_\_\_\_\_ %**

## ATTACHMENT 3

### CONCESSION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 2016 by and between THE CITY OF PHILADELPHIA, a municipal corporation, ("City") and \_\_\_\_\_ ("Concessionaire").

1. Recital.

The Concessionaire is a successful proposer to the City's Request For Proposals C-102-16 ("RFP") in connection with for a qualified Curtailment Service Provider (CSP) to provide access to PJM sponsored and other energy and capacity curtailment opportunities for the City of Philadelphia, as described in the RFP and any of its exhibits, attachments or addenda, all as attached hereto and which are all incorporated and made a part hereof of this concession agreement ("Contract").

2. Term.

The term ("Term") of the Agreement will start on the date that all of the conditions set forth in Attachment 3 of the RFP have been satisfied (the "**Commencement Date**"). The term will expire on the date that is one day prior to the one year anniversary of the Commencement Date. This Contract may be amended, in the City's sole discretion, for up to three (3) additional one (1) year terms.

3. Concession Fees.

**(a) Checks are to be made payable to the "City of Philadelphia" and submitted to the City of Philadelphia, City Hall, Suite 780, Philadelphia PA 19107. Attention:Kitty Lo. In the event Concessionaire fails to make payments as required herein on the due date, the City will notify the Concessionaire in writing that Concessionaire is in default. The City may impose an interest charge of one hundred and twenty-five percent (125%) per annum of the prime rate of Wells Fargo, (or its equivalent in the event there shall be no prime rate) on all amounts due from the due date until paid. If the default is not rectified within five (5) days from receipt of notice, this Contract may be terminated by the City and the City may exercise all of the rights and remedies set forth in this Contract or available at law or in equity.**

4. City Right of Entry and Inspection of Concession Premises and Products.

City may enter the Concession Premises at any time for any purpose necessary, incidental to or connected with the performance of its obligations hereunder, in the exercise of its governmental functions, in making any repairs to the Concession Premises or as may be required in the operation, maintenance, or development of the Concession, or to determine whether Concessionaire has complied or its complying with the terms and conditions of this Contract. City shall also have the right, but not the obligation, at all times during the term of this Contract and whether the Concession granted hereunder is in operation or not, to inspect products to be sold by the Concessionaire or by Concessionaire's vendors or subcontractors and to approve such products or reject them if they do not conform with the provisions of this Contract or are in nonconformity with any law, ordinance or regulation. In the event the City shall notify Concessionaire of its rejection of nonconforming products, the Concessionaire shall immediately cause such nonconforming products to be removed from the Concession Premises and shall not permit them to be sold at the Concession

Premises. Any sale of such nonconforming products by the Concessionaire after the receipt of such notice shall constitute a material breach of this Contract.

5. Affirmative Covenants of Concessionaire.

(a) Concessionaire shall observe and comply with all present and future laws, ordinances (including, but not limited to, the Fair Practices Ordinance, The Philadelphia Code, Chapter 9-1100), statutes, orders, rules, regulations, and requirements of all federal, state, and municipal governments, courts, departments, commissions, boards, or any other body exercising functions similar to those of any of the foregoing, which may be applicable to the Concessionaire, including, but not limited to health and sanitation standards ("Applicable Laws"). Concessionaire must, at its own cost and expense, procure and keep in force during the entire period of the Agreement all permits and licenses required by such laws and regulations, including but not limited to a Food Preparing and Serving License as issued by the City's Department of Licenses and Inspections. In the event Concessionaire is cited by City or any other regulatory agency for violation of any health codes or regulations, Concessionaire shall, within twenty-four (24) hours of receipt of notice of violation, provide notification and submit a plan listing steps to correct the violation(s) to the Department of Recreation's Operations Manager.

(b) Concessionaire shall pay before delinquency, all taxes, of any and all governmental authorities, that may be levied, assessed, or charged against the Concessionaire's interest in this Contract, against the personal property of the Concessionaire within the Concession Premises, or upon the rights of Concessionaire to occupy the Concession Premises as provided in this Contract or upon the Concessionaire's income from the operation of the Concession.

(c) On or before the commencement of Concession operations, the Concessionaire shall promptly procure and maintain throughout the Initial Term and any Renewal Term(s), at its sole cost and expense, the types and minimum limits of insurance coverage specified below. From time to time, but not more than once each year, the City may, in its reasonable discretion, require the Concessionaire to obtain additional types and amounts of insurance, or either of them, than what Concessionaire is obligated to obtain and maintain under this Concession Agreement. Concessionaire shall procure all insurance required below from reputable insurers who are acceptable to the City and who are authorized to do business in the Commonwealth of Pennsylvania. Concessionaire shall cause the insurance policies to provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, non-renewed, or scheduled to lapse. All insurance required hereunder must be written on an "occurrence" basis and not a "claim-made" basis, unless otherwise noted below:

(i) Workers' Compensation and Employers' Liability.

(1) Workers' Compensation: Statutory Limits

(2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.

(3) Other states insurance including Pennsylvania.

(ii) General Liability Insurance.

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$300,000 per occurrence for damage to rented premises; \$1,000,000 personal and advertising injury; and \$2,000,000 products and completed operations aggregate.

(2) Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations) liability.

(3) Host Liquor Liability Insurance coverage shall be in the amount of \$2,000,000 per occurrence as required by the City's Risk Management Division; combined single limit for liability arising out of the sale of or serving of alcoholic beverages.

(iii) Automobile Liability Insurance.

(1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(2) Coverage: Owned, non-owned, hired, rented or leased vehicles.

(iv) Property Insurance ("All Risk")

Covering all improvements, betterments, equipment, trade fixtures, merchandise, business personal property and any other property in Concessionaire's care, custody and control, or used by Concessionaire under the Concession Agreement and RFP, in an amount equal to the full replacement cost with no penalty for coinsurance. The City shall be named as loss payee.

(v) Business Interruption Insurance

Concessionaire shall maintain coverage for loss of earnings, the annual Concession Fee (in an amount equal to annual Concession Fee for one year) and necessary continuing expenses due to interruptions of business operations.

The City of Philadelphia, and their respective officials, officers, directors, employees, and agents must be named as additional insureds on all policies required above except the Workers Compensation and Employers' Liability. All such policies must include an endorsement stating that the coverage afforded the additional insureds is primary to any other coverage available to them. Concessionaire and its contractors and subcontractors shall not permit any lapse in or termination or cancellation of the insurance coverage required under this Concession Agreement. Concessionaire must ensure that replacement coverage meeting these requirements are in effect prior to the expiration of the policy period. If Concessionaire fails to procure and maintain such insurance, the City is not limited in the proof of any damages which the City may claim against the Concessionaire or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance. The City may also be entitled to recover damages from the Concessionaire for such breach, the uninsured amount of any loss, damages and expenses of suit and costs, including without limitation, reasonable collection fees,

suffered or incurred during any period when Concessionaire, its contractors or subcontractors shall have failed or neglected to provide the insurance as required herein.

(vi) Self-Insurance

Concessionaire may not self-insure any of the coverages required under this Concession Agreement, without the prior written approval of the City's Risk Manager. In the event that Concessionaire wants to self-insure any of the coverages listed above, it shall submit to the City's Risk Management Division, prior to the commencement date, a certified copy of Concessionaire's most recent audited financial statement, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by the City's Risk Manager. In the event the City grants such approval, Concessionaire understands and agrees that the City, its officers, employees and agents shall be entitled to receive the same coverages and benefits under Concessionaires' self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the Term of this Contract, Concessionaire self-insures its workers' compensation and employers' liability coverage, Concessionaire may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Concessionaire to the City, or to limit Concessionaire's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Concessionaire hereunder.

(vii) Insurance Not a Limit of Liability

The insurance requirements set forth in this Concession Agreement do not modify, limit or reduce the Concessionaires' and its contractors and subcontractors indemnifications of the City under the Concession Agreement, or limit any of their respective liability under the Concession Agreement to the limits of the policy(ies) or required insurance.

(viii) Proceeds for Property Damage

Concessionaire shall cause all proceeds of the Property Damage Risk policy to be payable to the City to use for the restoration or repair of the Concession Premises.

(ix) Waiver of Subrogation

Concessionaire shall cause each policy of insurance required under this Concession Agreement, excepting Worker's Compensation policies, to include a provision or a waiver of subrogation in favor of the City.

(x) Evidence of Insurance Coverage.

Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia  
Finance Department  
Division of Risk Management  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102-1579  
(Fax No.: 215-683-1705).

A copy of the certificates of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's Risk Management Division at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days written notice to Provider.

(d) Indemnification and Release Concessionaire shall promptly indemnify, defend, hold harmless the City of Philadelphia (the "City") from and against all claims, suits, causes of actions, cost recovery actions, costs, interest and expenses, demands, judgments, liabilities, damages, liens, mechanics or material men's liens and claims of lien (including reasonable attorney's fees and costs) (individually, a "Claim" and collectively the "Claims") arising in whole or in part from the Concessionaire's or any of its contractors' or subcontractors', employees', invitees', agents', successors' and assigns' entry onto and use of, including but not limited to property damage and personal injury (including death). In the event of any claim, Concessionaire shall promptly defend the Claim on behalf of the City, and Concessionaire shall pay, perform and discharge any judgment, order or decree entered or agreed to on account of the Claim. Concessionaire may not settle any Claim without the prior written approval of the city. Notwithstanding the foregoing, the City has the right, but not the obligation, to defend itself with respect to a Claim and appoint its own counsel to defend the Claim. These provisions shall survive the expiration or sooner termination of this Concession Agreement. In consideration of the Concession given to the Concessionaire by the City, Concessionaire, for itself and its officers, directors, employees, agents, sub licensees, contractors and subcontractors, successors and assigns, and any person claiming by, through or under them, or any of them (collectively, the "Releasers"), remises, quitclaims, releases and forever discharges the City, and their respective officials, officers, directors, employees, boards, commissions, agents, successors and assigns (acting officially or otherwise) collectively, the "Releasees"), from any and all, and all manner of, actions and causes of action suits, claims, liabilities and demands whatsoever in law or in equity, which the Concessionaire or any of the Releasers may have against the City or any of the Releasees, relating in any way to any condition in, on, or about the Concession Premises during the exercise of the Concession, the entry onto or use of the Concession Premises pursuant to the Concession Agreement, or relating in any way to the exercise of any rights or performance of any obligations under the Concession Agreement.

6. Reports; Records; Inspection of Records.

(a) Reports. The Concessionaire shall provide the City with all reports as specified in the RFP.

(b) Maintenance of Records. The Concessionaire shall keep and preserve at its office during the term of this Contract and for at least three years after the termination or expiration of this Contract, balance sheets, statements of earnings, general ledger, receipts and disbursement journals, sales records, cleaning, extermination and service records, information relating to any commitments with minority, woman or disabled business enterprises (e.g., copies of subcontracts,) and other supporting documentation which shall disclose in detail all information required to permit City to verify contract performance and payment of all amounts due or required to be paid under this Contract. All financial records maintained by Concessionaire shall be in accordance with generally accepted accounting principles.

(c) Inspection of Records. The City shall have the right to inspect and audit the Concessionaire's books of account, and other records maintained as required by this Contract, at all reasonable times and at such place as the City may prescribe.

7. Default and Termination of the Contract; Termination For Convenience.

(a) Any failure by Concessionaire to comply with any provision of the Contract may, in the sole discretion of the City, constitute an event of default. In the event of a default by Concessionaire, City shall give Concessionaire written notice of such default and permit Concessionaire, within a period of five (5) days thereafter, or such additional cure period as City may authorize, to correct the default; provided, however, that no such notice from City shall be required nor shall City permit any period for cure if the event of default creates an emergency which requires, in City's sole discretion, immediate exercise of City's rights or remedies. After providing such notice and grace, the City may terminate the Contract if Concessionaire, in the City's sole judgment, has failed to satisfactorily cure such default. No extension or indulgence granted to Concessionaire shall operate as a waiver of any of City's rights in connection with the Contract. The right to terminate the Contract shall not be exclusive and is in addition to any other rights or remedies available to City under this Contract, at law or in equity.

(b) This Contract may be terminated by City for the convenience of City at any time prior to its expiration, by giving to Concessionaire notice of its intention to terminate the Agreement at least thirty (30) days in advance. The exercise of any such right of termination on the part of the City, shall be without liability against the City for any damage or loss of profit which Concessionaire may suffer by reason of the termination.

(c) If the Contract is terminated for any reason, any outstanding Concession Fees , as well as all other charges, payments, costs, and expenses herein agreed to be paid by the Concessionaire shall be immediately due and payable to City.

8. Force Majeure.

Anything in this Contract to the contrary notwithstanding, the City shall not be responsible or liable for failure to fulfill any of its obligations set forth in this Contract occasioned by acts of God, inclement weather, acts of public enemy, riot, freight embargo, strike, other work stoppage, government action, breakdown or failure of apparatus, equipment or machinery employed in supplying required services or any act or condition beyond the reasonable control of the City.



9. Assignment and Transfer.

(a) The Concessionaire

The Concessionaire may not transfer or assign this Contract, either in whole or in part, without the prior written consent of the City. If the City approves any transfer or assignment of this Contract, the Concessionaire will, nevertheless, remain liable for the performance of all the obligations of the Concessionaire under this Contract. The Concessionaire will require any transferee or assignee to execute and deliver to the City an assumption of liability agreement, in form satisfactory to the City, including without limitation, the assignee's ratification of and agreement to be bound by all of the provisions of this Contract. The consent of the City to one or more assignments or transfers of this Contract shall not be construed as a consent to any other assignment or transfer of this Contract.

(b) The City

The City may assign, transfer, or encumber the City's interest in this Contract at any time without notice to the Concessionaire. The Concessionaire waives any requirements under the laws of the Commonwealth of Pennsylvania regarding the witnessing or execution of assignments.

10. Participation of Minority, Woman and Disabled Business Enterprises

This Contract is subject to the Antidiscrimination Policy under Mayoral Executive Order 03-12 for participation by Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE") and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") in City contracts. While there are no numerical participation ranges established for this RFP, all Applicants should exercise "Best and Good Faith Efforts" to include M/W/DSBEs in their proposals. "Best and Good Faith Efforts" are those efforts, the scope, intensity and appropriateness of which are taken to achieve meaningful and representative opportunities for participation by M/W/DSBEs in the contract. M/W/DSBEs, submitting as prime concessionaires, are strongly encouraged to apply for this opportunity. Participation by M/W/DSBEs in this concession opportunity should be indicated on the form entitled, "Solicitation for Participation and Commitment Form," found in Attachment 5 to the RFP for the Concession Agreement.

11. Concession not Lease.

This Contract creates a personal contractual obligation of Concessionaire. Nothing in this Contract shall be construed as granting a leasehold interest in the Concession Premises to the Concessionaire. Concessionaire is an independent contractor and not an agent, partner, or employee of the City.

12. Condemnation.

If the Concession Premises or any part of the Concession Premises, are taken under condemnation proceedings by any government authority, the City may, at the City's option, terminate this Contract as of the date of the taking. All damages awarded for such taking shall belong to and become the property of the City. The Concessionaire shall have no claim against the City by reason of such taking or termination and shall not have any claim or right to any portion of the amount that may be awarded or paid to the City as a result of any such taking.

13. Complete Agreement; Governing Law.

This Contract sets forth all the promises, agreements, conditions, and understandings between the City and the Concessionaire relating to the subject matter thereof. There are no promises, agreements, conditions, or understandings, either oral or written, between the City and the Concessionaire other than those set forth in this Contract. This Contract may only be amended, modified, or supplemented by agreement in writing signed by both the City and the Concessionaire. This Contract is governed by the laws of the Commonwealth of Pennsylvania.

14. Contract Binding.

This Contract is binding upon the parties, their heirs, executors, administrators, successors, and assigns, subject to the provisions relating to assignment.

15. Notices; Approvals.

All notices, requests, and other communications under this Contract shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If intended for the City:

City of Philadelphia  
Philadelphia Parks & Recreation  
One Parkway Building, 10<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102  
ATTN: Fiscal Officer

If intended for the Concessionaire:

16. Captions and Section Numbers.

The captions, article numbers, and paragraph numbers appearing in this Contract are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Contract nor in any way affecting this Contract.

17. Partial Invalidity.

If any term, covenant, or condition of this Contract or the application thereof to any party or circumstance shall, to any extent, be held invalid, or unenforceable, the remainder of this Contract or the application of such term, covenant or condition to parties or circumstances other than those to which the Contract was held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant, or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

18. No Third Party Beneficiary.

Nothing contained in this Contract is intended to or shall be deemed to confer a third party beneficiary right upon any person, firm, or corporation.

19. Nondiscrimination.

(a) This Contract is entered into under the terms of the Philadelphia Home Rule Charter and, in its performance, the Concessionaire shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, gender identity, religion, national

origin, or ancestry. In the event of such discrimination, the City may terminate this Contract forthwith.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, the Concessionaire agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in a exclusionary private organization, insofar as such participation confers a employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges, or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin, or ancestry constitutes a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law or equity.

(c) The Concessionaire agrees to include the immediately preceding paragraph, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for supplies or work to be performed pursuant to this Contract. The Concessionaire further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided herein or otherwise available in law or equity.

IN WITNESS WHEREOF, the City and the Concessionaire have executed this Agreement as of the date first above written and intend to be legally bound thereby.

THE CITY OF PHILADELPHIA

By: \_\_\_\_\_  
Procurement Commissioner

CONCESSIONAIRE

By: \_\_\_\_\_  
President/Vice President

Attest: \_\_\_\_\_  
Secretary/ Treasurer

Approved as to legal form:

\_\_\_\_\_  
Senior Attorney

# ATTACHMENT 4

## CITY OF PHILADELPHIA – BUSINESS, CORPORATE AND SLAVERY ERA INSURANCE ORDINANCE

A Business Entity entering into a Contract with the City must complete an Affidavit disclosing any and all records of Participation or Investment in, or Profits derived from Slavery, including Slaveholder Insurance Policies, during the Slavery Era. The Business Entity must complete and submit the Affidavit and any attachments to the Procurement Department. This is required only of the Business Entity actually selected for award of a Contract. It must be done after the Contract or Contract amendment has been executed. Questions regarding the Affidavit may be directed to the Procurement Department Customer Service at [bid.info@cityofphila.org](mailto:bid.info@cityofphila.org).

City Department Awarding Agreement \_\_\_\_\_ Department Contact Person \_\_\_\_\_

### AFFIDAVIT DISCLOSING SLAVERY ERA PARTICIPATION, INVESTMENTS, OR PROFITS

1. I, \_\_\_\_\_, am authorized to bind contractually the Business Entity identified below.
2. Information about the Business Entity entering into a Contract with the City is as follows:

Business Entity Name	Phone	Fax
Street Address	City	State
		Zip

3. Has the Business Entity submitted the Slavery Affidavit previously? \_\_\_NO \_\_\_YES Date of prior submission: \_\_\_\_\_. If "NO," complete Section 4, 5, and 6. If "YES," list the date of prior submission and skip to Section 6 and execute the form.
4. The Business Entity came into existence in \_\_\_\_\_ (year).
5. The Business Entity has searched its records and those of any Predecessor Companies for information relating to Participation or Investments in, or Profits derived from Slavery or Slaveholder Insurance Policies. Based on that research, the Business Entity represents that:  
  
\_\_\_\_\_ The Business Entity found no records that the Business Entity or any of its Predecessor Companies had any Participation or Investments in, or derived Profits from, Slavery or Slaveholder Insurance Policies during the Slavery Era.  
  
\_\_\_\_\_ The Business Entity found records that the Business Entity or its Predecessor Companies Participated or Invested in, or derived Profits from Slavery during the Slavery Era. The nature of that Participation, Investment, or Profit is described on the attachment to this Affidavit and incorporated herein.  
  
\_\_\_\_\_ The Business Entity found records that the Business Entity or its Predecessor Companies bought, sold, or derived Profits from Slaveholder Insurance Policies during the Slavery Era. The names of any Enslaved Persons or Slaveholders under the Policies are listed on the attachment to this Affidavit and incorporated herein.
6. I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the representations made herein are true and correct to the best of my knowledge.

Executed on \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_  
(Date) (City) (State)

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

Notary \_\_\_\_\_

### DEFINITIONS

City means the City of Philadelphia.

Business Entity means any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, or unincorporated association, including any parent company, subsidiary, exclusive distributor or company affiliated therewith, engaged in a business or commercial enterprise.

Contract means any agreement, franchise, lease or concession including an agreement for any occasional professional or technical personal services, the performance of any work or service, the provision of any materials or supplies or rendering of any service to the City of Philadelphia or the public, which is let, awarded or entered into with or on behalf of the City of Philadelphia or any Department or Agency of the City.

Enslaved Person means any person who was wholly subject to the will of another and whose person and services were wholly under the control of another and who was in a state of enforced compulsory service to another during the Slavery Era.

Investment means to make use of an Enslaved Person for future benefits or advantages.

Participation means having been a Slaveholder during the Slavery Era. Predecessor Business Entity means an entity whose ownership, title and interest, including all rights, benefits, duties and liabilities were acquired in an uninterrupted chain of succession by the Business Entity.

Profit means any economic advantage or financial benefit derived from the use of Enslaved Persons.

Slaveholder means holders of Enslaved Persons, owners of business enterprises using Enslaved Persons, owners of vessels carrying Enslaved Persons or other means of transporting Enslaved Persons, merchants or financiers dealing in the purchase, sale or financing of the business of Enslaved Persons.

Slaveholder Insurance Policies means policies issued to or for the benefit of Slaveholders to insure them against the death of, or injury to, Enslaved Persons.

Slavery means the practice of owning Enslaved Persons.

Slavery Era means that period of time in the United States of America prior to 1865.

## ATTACHMENT 5

### DISCLOSURE OF WOMEN AS BOARD MEMBERS AND EXECUTIVE STAFF

**Instructions:** As required by Section 17-104 of The Philadelphia Code entitled "Prerequisites to the Execution of City Contracts," Section 17-104(3) requires bidder to complete and submit this form with its bid. If bidder believes that these requirements do not apply (e.g., bidder is a single-member Limited Liability Company), please check the first field below and attach an explanation. This form should be submitted with bid but the City reserves the right to allow bidder to submit this information at any time prior to award of a contract.

**Bidder's Name:** \_\_\_\_\_ **Bid Number:** \_\_\_\_\_

Please check here if the requirements do not apply to bidder and attach explanation:

#### **Disclosure of Women as Board Members and Executive Staff**

Pursuant to Section 17-104(3) (a) (i) of The Philadelphia Code, please provide the following information:

1. Current percentage of female executive officers in bidder's company:
2. Current percentage of women on the executive board of the bidder's company:
3. Current percentage of women on the full board of the bidder's company:

#### **Aspirational Goals for Women as Board Members and Executive Staff**

Pursuant to Section 17-104(3) (a) (ii) of The Philadelphia Code, please provide the following information:

1. Percentage goal for female executive officers in bidder's company:
2. Percentage goal for women on the executive board of the bidder's company:
3. Percentage goal of women on the full board of the bidder's company:

#### **Identify Below Any Efforts to Achieve the Aforementioned Goals:**

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Authorized Signature

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Date

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Print Name and Title

Revised 7.1.14

**ATTACHMENT 6**

<b>Site</b>	<b>2015 PLC</b>	<b>2015 Nomination</b>
<b>City of Philadelphia - Airport</b>	25992.53	2939
<b>City of Philadelphia - Art Museum</b>	2879.81	356
<b>City of Philadelphia - Central Library</b>	1058.7	54
<b>City of Philadelphia - City Hall</b>	1057.31	100
<b>City of Philadelphia - Criminal Justice Center</b>	2869.15	627
<b>City of Philadelphia - Curran Fromhold Correctional Facility (CFCF)</b>	2841.13	284
<b>City of Philadelphia - Detention Center</b>	600.36	62
<b>City of Philadelphia - Family Court</b>	486.95	86
<b>City of Philadelphia - Holmesburg Prison</b>	146.82	5
<b>City of Philadelphia - House of Corrections / Riverview</b>	904.02	34
<b>City of Philadelphia - Municipal Services Building</b>	1442.26	118
<b>City of Philadelphia - NE WPCP</b>	337.01	303
<b>City of Philadelphia - One Parkway Building</b>	2097.63	393
<b>City of Philadelphia - Philadelphia Industrial Correctional Center (PICC)</b>	1191.88	552
<b>City of Philadelphia - Philadelphia Zoo</b>	1530.33	100
<b>City of Philadelphia - Riverside Correctional Facility</b>	725.46	123
<b>City of Philadelphia - SW WPCP</b>	7357.1	502
<b>City of Philadelphia- Youth Study Center</b>	682.09	15
<b>The City of Philadelphia - Queen Lane</b>	403.24	6
<b>The City of Philadelphia - SE WPCP</b>	1843.72	500