

**SCHOOL DISTRICT  
OF  
PHILADELPHIA**

***OFFICE OF PROCUREMENT SERVICES***

John L. Byars  
Acting Senior Vice President, Procurement Services

**POLICIES  
&  
PROCEDURES  
MANUAL**

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*Revised May 2008*

## TABLE OF CONTENTS

	<b>PAGE</b>
<b>I. MISSION STATEMENT</b>	1
<b>II. DEFINITIONS</b>	2
<b>III. COMPETITIVE SOLICITATION PROCEDURES</b>	
A. Purpose .....	7
B. Scope .....	9
C. Policy .....	9
D. Procedure .....	9
E. Purpose of Bidding Requirements .....	13
F. Bid Evaluation, Responsibility and Responsiveness .....	13
G. Bid Modification or Withdrawal .....	15
H. Bid Opening .....	17
I. Bid Review .....	17
J. Bid Rejection .....	17
K. Bid Award .....	18
L. Non-Collusion and Bid-Rigging .....	20
M. Disqualification, Suspension or Debarment of Bidders .....	21
<b>IV. RFP SOLICITATION PROCEDURES</b>	
A. What is a Request for Proposal? (RFP) .....	22
B. RFP Planning Process:	
When Are RFPs Practicable/Advantageous? .....	22
1. Planning Process .....	22
2. When is an RFP Practicable? .....	22
3. When is an RFP Advantageous? .....	23
C. Key RFP Participants .....	23
1. User Department .....	23
2. The Buyer .....	24
3. Office of Small Business Development .....	24
4. Risk Management .....	24
5. Evaluation Committee .....	24
6. Legal Department .....	25
7. Consultants .....	25
D. Dollar Thresholds for RFP's .....	25
E. Content of the RFP.....	25
F. Evaluation Process.....	26
G. Competitive Range Determination .....	27
H. Written or Oral Discussions .....	27
1. Key Considerations.....	27
2. Mistakes to Avoid.....	28
I. Best and Final Offers .....	28
J. Proposal Preparation Time .....	29

K. Public Notice-Advertisement .....	29
L. Pre-Proposal Conference .....	29
M. Amendments to RFP .....	29
N. Modification or Withdrawal of Proposal .....	29
O. Receipt of Proposals .....	29
P. Late Proposals .....	30
Q. What If Only One Proposal Is Received? .....	30
R. Evaluation of Proposals .....	30
S. Proposal Discussions with Individual Vendors .....	31
T. Mistakes in Proposals .....	31
U. Award of Contract .....	31
V. Notifying Unsuccessful Vendors .....	32
<b>V. EMERGENCY PURCHASES.....</b>	<b>32</b>
<b>VI. PURCHASES BUDGETED</b>	
A. Purpose .....	32
B. Policy .....	33
C. Procedures .....	33
<b>VII. BID PROTEST PROCEDURES</b>	
A. Who May File the Protest?.....	33
B. Time for Filing.....	34
C. Form of Protest.....	34
D. Notice of Protest .....	34
E. Stay of Procurement .....	34
F. Miscellaneous .....	35
1. Senior Executive Vice President, Procurement Services Response	35
2. Protesting Party Reply .....	35
3. Review.....	35
4. Clearly Without Merit Determination .....	35
G. Settlement .....	35
H. Decision .....	35
I. Remedy Before Execution of Contract .....	36
J. Remedies After Execution of Contract .....	36
<b>VIII. RETURNED BID PROCEDURES</b>	
A. Policy .....	37
B. Procedures .....	37
<b>IX. VENDOR'S PROCEDURES</b>	
A. Purchasing .....	37
B. Vendor Information and Requirements .....	38
C. Changes in Mailing List .....	39
D. The Bid Process .....	39
E. Bid Specifications .....	40
F. Pre-Bid Conferences .....	40
G. Addenda and Changes .....	41

H. Bid Bonds: (Equipment and Supplies) .....	41
I. Bid Information .....	41
J. Mailing of Bids .....	41
K. Bid Terms and Conditions .....	42
1. Discounts .....	42
2. Errors in Bidding .....	42
3. Duration of Bid .....	42
4. Improper Bid Withdrawal .....	42
5. Purchase Orders .....	43
L. Bid Evaluation .....	43
M. Rebids .....	44
N. The Contract Process .....	44
1. Award Notification .....	44
2. Performance Bonds .....	44
3. Packing Slips/Proof of Delivery .....	44
O. Payment Process.....	45
1. Payment .....	45
2. Split Awards, Item Deletion, “All or Nothing Bids”.....	45
3. Bidder Disqualification.....	46
4. Overshipments.....	46
P. Office of Small Business Development.....	46
1. Anti-Discrimination Policy.....	47
2. M/WBE Certification .....	47
Q. Surplus Property.....	47
R. What To Do If You Have a Problem? .....	47
S. Professional Services .....	47

**X. MINORITY/SMALL BUSINESS DEVELOPMENT**

A. Introduction .....	49
B. Objective .....	49
C. Responsible Parties .....	50
D. Authority .....	50
E. Effective Date .....	50
F. Procedures for Purchasing Department .....	50
G. Buyer Responsibility .....	51
H. Procedures for Professional Services .....	51
I. Design & Construction Procedures.....	52
J. Procedures for Small Business Development .....	53
K. Bidder Responsibility .....	55
1. Participation Ranges .....	55
2. Responsiveness .....	56
3. Access to Information .....	58
4. Records and Reports .....	58
L. Remedies .....	58
M. Appeal Process .....	59

**XI. LIMITED CONTRACTS POLICIES AND PROCEDURES**

A. School Reform Commission Authorization..... 60

    1. Policy..... 60

    2. Procedures – Preparation of Resolution for SRC  
        Consideration..... 60

B. Contracts Reviewed by the Committee..... 61

    1. Procedures - Contracts for a Single Activity ..... 62

    2. Procedures – Aggregate Amount of Limited Contracts  
        With One Vendor..... 62

    3. Explanation ..... 62

    4. Procedures – School District Funds ..... 63

C. Submission of Contracts..... 63

    1. Policy – Submission of Contracts..... 63

    2. Procedures – Submission of Contracts ..... 63

    3. Procedures – Communicating Changes in Committee’s  
        Procedures ..... 64

D. Committee’s Operating Procedures..... 64

    1. Policy – Committee Membership..... 64

    2. Procedures – SBDO..... 64

    3. Procedures – Committee Review of Contracts..... 65

    4. Procedures – Gathering Information ..... 66

    5. Procedures – Financial Responsibility ..... 66

    6. Procedures – Appeal of Disapproval of Contract..... 66

    7. Procedures – Graduation Contracts..... 66

E. Consequences for Non-Compliance with Procedures..... 67

    1. Policy..... 67

    2. Procedures – Payment of Vendors..... 67

    3. Procedures – Internal Consequences..... 68

F. Review Committee’s Rubric for Reviewing Contracts..... 68

    1. Limited Contract Requirements (Entire Committee) ..... 68

    2. Chief Academic Officer’s Office..... 69

    3. Small Business Development Office (SBDO)..... 69

    4. Grants Office ..... 69

    5. Office of General Counsel ..... 69

    6. Chief Financial Officer (CFO)’s Office ..... 70

**XII. RFP/BID DEBRIEFING**

A. Purpose..... 70

B. Essentials..... 70

C. Disclosure..... 71

D. Debriefing Summarization..... 71

E. Scheduling of Debriefings..... 71

## **I. MISSION STATEMENT**

The Office of Procurement Services assists schools, academic and education support offices in procuring the highest quality goods and services at competitive prices. We are committed to securing these goods and services from reputable and responsible suppliers in accordance with applicable laws of the Commonwealth of Pennsylvania, the Pennsylvania School Code, and the policies of both the School District of Philadelphia and School Reform Commission.

The Office of Procurement Services is committed to ensuring that our business practices are carried out with the highest degree of professional ethics, integrity and competency. We are committed to providing superior customer service; implementing and utilizing best procurement practices; building solid business partner relationships; utilizing latest technological advancements; providing continuing education opportunities to our professional staff; networking with other procurement professionals; and continued advocacy of small business development by increasing the number of minority-owned and woman-owned businesses who bid on School District of Philadelphia contracts.

## II. DEFINITIONS

**Advertising.** “Advertising” means the placement of a public notice: (1) in a newspaper of general circulation; (2) in a trade publication; (3) by electronic publication which is accessible to the general public; or (4) by issuance of invitations to bid or requests for proposals to bidders or vendors on a solicitation mailing list.

**African American.** “African American” means a U.S. citizen or lawfully admitted permanent resident who originates from any of the black racial groups of Africa.

**Asian American.** “Asian American” means a U.S. citizen or lawfully admitted permanent resident that originates from the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

**Bid.** “Bid” means a firm and unconditional offer in response to an invitation to bid.

**Bidder.** “Bidder” means a business enterprise that submits a bid in response to an invitation to bid.

**Bid Bond.** “Bid Bond” is an acceptable bond issued by a surety company authorized to do business as a surety in the Commonwealth of Pennsylvania, and conditioned upon the awarded bidder’s execution of a contract in accordance with the terms and conditions of the invitation to bid, and receipt of acceptable performance bond or payment bond, if required. Such surety bond is solely for the protection of the School District of Philadelphia.

**Business Enterprise.** “Business Enterprise” means a corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity.

**Certified Business Enterprise.** “Certified Business Enterprise” means a Minority or Women’s Business Enterprise that has been certified by certifying agency approved by the School District.

**Contract.** “Contract” means a type of written agreement, regardless of what it may be called, for the purchasing of supplies, materials, equipment, or services, and awarded by the School Reform Commission or a person or committee with delegated power from the School Reform Commission to award a contract, and executed by all parties in accordance with the Pennsylvania Public School Code, 24 P.S. §1-101, et seq., and Pennsylvania law.

**Contractor.** “Contractor” means the person, firm, or legal entity with which the School District has entered into a contract.

**Control.** “Control”, for purposes of determining whether a business is a minority business enterprise or women’s business enterprise, means that the minority group member owners or women owners: (1) possess and exercise the legal authority and power to manage business assets, goodwill, and daily operations of the business; and (2) actively and continuously exercise this managerial authority and power in determining the policies and directing the operations of the business.

**Direct Participation.** “Direct Participation” is participation by M/WBE firms in the delivery of products or services directly related to the bid or proposal.

**Hispanic American.** “Hispanic American” means a U.S. citizen or lawfully admitted permanent resident of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish or Portuguese culture or origin, regardless of race.

**Indirect Participation.** “Indirect Participation” is participation by M/WBE firms through contracts for products and services used in the ordinary course of business, *i.e.*, temporary help, janitorial services, snow removal, delivery services, food service, equipment purchases and services.

**Invitation to Bid or ITB.** “Invitation to Bid” or “ITB” includes all documents, including those either attached or incorporated by reference, used for soliciting bids.

**Joint Venture.** “Joint Venture” means an association between business enterprises that provides for the sharing of economic interest and risks.

**Local Business.** “Local Business” means a business located in the City of Philadelphia.

**Meaningful and Substantial Participation.** “Meaningful and Substantial Participation” means that the bidder or proposer meets or exceeds the targeted ranges of M/WBE participation established for a bid or proposal.

**Minority Business Enterprise or Minority-Owned Business Enterprise or MBE.** “Minority Business Enterprise” or “Minority-Owned Business Enterprise” or “MBE” means a business enterprise (1) that is owned, operated, and controlled by one or more minority group members who have at least 51% ownership and (2) in which the minority group members have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.

**Native American.** “Native American” means a U.S. citizen or lawfully admitted permanent resident who originates from any of the original peoples of North America and who maintains cultural identification through tribal affiliation or other suitable authority in the community.

**Performance Bond.** “Performance Bond” is an acceptable bond issued by a surety company authorized to do business as a surety in the Commonwealth of Pennsylvania, and provided by a contractor solely for the protection of the School District of Philadelphia, and conditioned upon the faithful performance of the contract in accordance with the terms, requirements, plans, specifications, and conditions of the contract.

**Proposal.** “Proposal” is an offer made in response to a request for proposals that may be subject to negotiation and award criteria set forth in the request for proposals.

**Proposal Security.** “Proposal Security” is an acceptable form of financial security (e.g., certified check, irrevocable letter of credit, surety bond provided by a surety authorized to do business as a surety in the Commonwealth of Pennsylvania, or another form of financial security as specified in the RFP) provided by the vendor to guarantee the vendor’s execution of a contract in accordance with the terms and conditions of the request for proposals.

**Purchase Order.** “Purchase Order” is written authorization for a contractor to proceed to furnish supplies, materials, equipment, or services in accordance with the invitation to bid, request for proposals, request for quotes, or work request and the awarded bidder’s or vendor’s bid, proposal, quote, or firm and unconditional offer. A purchase order constitutes the School District’s legal and binding acceptance of a bidder’s or vendor’s offer made through its bid, proposal, quote or firm and unconditional offer.

**Purchasing.** “Purchasing,” means the buying, renting, leasing, or otherwise obtaining or acquiring any supplies, materials, equipment, or services. “Purchasing” includes all functions that pertain to the obtaining or acquiring of any supplies, materials, equipment, or services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

**Range.** “Range” for purposes of this policy is a numerical percentage or dollar value that is neither rigid or inflexible, that can be achieved by means of applying every reasonable, sufficient, or best effort in the utilization of minority and woman-owned businesses as contractors and subcontractors based on availability of firms in the geographic market. Ranges are established based upon research and documentation by the City of Philadelphia Minority Business Enterprise Council. For FY04, ranges will be established on a contract-by-contract basis.

**Request for Proposals or RFP.** “Request for Proposals” or “RFP” includes all documents, including those either attached or incorporated by reference, used for soliciting proposals.

**Responsible Bidder.** “Responsible Bidder” is a bidder that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

**Responsible Vendor.** “Responsible Vendor” is a vendor that has submitted a responsive proposal and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

**Responsive Bid or Responsive Proposal.** “Responsive Bid” or “Responsive Proposal” is a bid or proposal that conforms in all material respects to the requirements and criteria in the invitation to bid or request for proposals.

**Responsive Bidder.** “Responsive Bidder” is a bidder that has submitted a bid that conforms in all material respects to the invitation to bid.

**School Code or Public School Code or Pennsylvania School Code.** “School Code” or “Public School Code” or “Pennsylvania School Code” mean the Pennsylvania Public School Code of 1949, 24 P.S. §1-101, et seq., as amended.

**School District or District.** “School District” or “District” means the School District of Philadelphia.

**Services.** “Services” means the furnishing of labor, time, or effort by a contractor not involving the delivery of specific supplies, materials, equipment or other end product other than drawings, specifications, or reports that are merely incidental to the required performance. “Services” includes utility services, and those services formerly provided by public utilities such as electrical, telephone, water services. “Services” does not include building, altering, repairing, improving, maintaining, or demolishing a School District building or School District real property.

**Small Business.** A “Small Business”, for purposes of the Anti-Discrimination Policy, is a business owned or operated by a certified Minority or Woman-owned firm or is identified by the Small Business Administration as a Small Business and is registered with the School District of Philadelphia Small Business Department.

**Specifications.** “Specifications” means the description of the physical or functional characteristics or requirements or the nature of a supply, material, equipment, or service item, and may include a description of any requirement for inspecting, testing, or preparing a supply, material, equipment, or service item for delivery.

**SRC.** “SRC” means the School Reform Commission of the School District of Philadelphia.

**Subcontractor.** “Subcontractor” means a business enterprise that has a direct contract with a contractor to perform part of the work on a contract.

**Supplier.** “Supplier” means a business enterprise that: (1) furnishes needed items to a contractor; and (2) either: (i) is involved in the manufacture or distribution of the supplies, materials; or equipment, or (ii) otherwise warehouses and ships the supplies, materials, or equipment.

**Supplies.** “Supplies” means any property, including but not limited to, equipment, materials, and leases of and installment purchases of tangible or intangible personal property. “Supplies” does not include buildings, real property, and leases of buildings or real property.

**Vendor.** “Vendor” means a business enterprise that submits a proposal, quote, or firm and unconditional offer in response to a request for proposals, request for quotes, or work request.

**Women’s Business Enterprise or Woman-Owned Business Enterprise or WBE .** “Women’s Business Enterprise” or “WBE” means a business enterprise: (1) that is owned, operated, and controlled by 1 or more women who have 51% ownership; (2) in which the women have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.

**Work.** “Work” means the supplies, materials, equipment, or services that is the subject of a contract.

[*Public School Code*, 24 P.S. §1-101, et seq.; Commonwealth of Pennsylvania Department of General Services *Field Procurement Handbook*, Chapter 2 *Definitions*.]

### III. COMPETITIVE BID SOLICITATION PROCEDURES

#### A. **PURPOSE**

The purpose of this procedure is to ensure that bid solicitations are awarded on the basis of a competitive process designed to select qualified vendors to provide goods and services to the District. In doing so, Procurement works in conjunction with end-users to select vendors who will receive bid solicitations. Procurement has the final authority to designate which vendors will receive bids. A vendor qualification evaluation, pre-bid conference or mandatory site inspection also may be conducted if it is determined that the complexity or risks associated with the purchase warrant these extra steps.

**Common Standard.** Central to all competitive procurement (whether solicitations for competitive bids or proposals) is the common standard. The common standard is necessary in order that the School District may have the advantage of fair and just competition, thus eliminating as much as possible, any question of favoritism. The purpose of competitive procurement is frustrated when there is no common standard on which bids and proposals are based. The common standard provides the level playing field for those who want to compete for School District contracts. Common standard requires (1) previously prepared common specifications, terms, and conditions which are freely accessible to all competitors; (2) a common standard applied throughout the competitive bid or proposal process; (3) common treatment of bidders and vendors in the competitive bid or proposal process; (4) a common standard under which all competitive bids or proposals will be received; and (5) an award of contract which conforms to the specifications, terms, and conditions on which the competitive bids or proposals are taken.

[*Ezy Parks v. Larson*, 454 A.2d 928 (Pa. 1983); *Page v. King*, 131 A. 707 (Pa. 1926); *American Totalisator Co., Inc. v. Seligman*, 384 A.2d 242 (Pa. Cmwlth. 1977), *affd.*, 414 A.2d 1037 (Pa. 1980); Commonwealth of Pennsylvania Department of General Services *Field Procurement Handbook*, Chapter 13 *Specifications*.]

**Changing Bid or Contract Specifications without Prior Notice to All Bidders Prohibited.** During the competitive bid process, the School District is prohibited from changing terms of the bid or contract specifications, requirements, terms, or conditions unless it gives prior notice of such changes to **all** bidders.

[*American Totalisator Co., Inc. v. Seligman*, 384 A.2d 242 (Pa. Cmwlth. 1977), *affd.*, 414 A.2d 1037 (Pa. 1980).]

**Private Negotiations are Prohibited.** During the competitive bid process, negotiations between the School District and potential bidders, or between the School District and the “lowest responsive and responsible”

bidder, through which the bid or contract specifications, terms, and conditions are modified or changed, are not in keeping with the purpose of competitive bidding, and are prohibited. Public notice or advertisement of changes made in bid or contract specifications during the bidding process must be done so that all potential bidders will be informed of what is expected of them. If the School District wants to deviate from the requirements of competitive bidding by modifying or changing the terms of its invitation to bid or its bid or contract specifications, the proper procedure is to set aside all of the bids, re-advertise, and secure new bids so that all of the bidders would be on an equal footing.

[*Page v. King*, 131 A. 707 (Pa. 1926); *Philadelphia Warehousing and Cold Storage v. Hallowell*, 490 A.2d 955 (Pa. Cmwlth. 1985); Commonwealth of Pennsylvania Department of General Services *Field Procurement Handbook*, Chapter 13 *Specifications*.]

**Conformance with Bid Instructions and Specifications.** Instructions to bidders are a *material* part of the contract between the parties. Bid instructions and bid or contract specifications are mandatory, and must be strictly followed to make the bid valid.

[*R&B Builders, Inc. v. Philadelphia School District*, 202 A.2d 82 (Pa. 1964); *Harris v. Philadelphia*, 129 A. 460 (Pa. 1925); *City of Philadelphia v. Canteen Company, Division of TW Services, Inc.*, 581 A.2d 1009 (Pa. Cmwlth. 1990); *Conduit and Foundation Corp. v. City of Philadelphia*, 401 A.2d (Pa. Cmwlth. 1979).]

If bids could depart from the specifications, the result would be the defeat of competition and a contract for something for which there was no competitive bidding. If the bid does not conform to the specifications in all *material* respects, it is not a bid at all; but a new proposition.

[Commonwealth of Pennsylvania Department of General Services *Field Procurement Handbook*, Chapter 13 *Specifications*.]

If bid specification requirements are *mandatory*, failure to comply with them will make the bid non-responsive.

[*Cardiac Science, Inc. v. Department of General Services*, 808 A.2d 1029 (Pa. Cmwlth. 2002); *McMullin v. County Commissioners*, 287 A.2d 922 (Pa. Cmwlth. 1972).]

The School District has the right to waive minor, technical, or inconsequential discrepancies, variations or irregularities in a bid or superficial deviations from bid instructions when such discrepancies, variations, irregularities, or deviations do not “fly in the face” of a clearly mandatory bid instruction or bid specification requirement.

[*Rainey v. Borough of Derry*, 641 A.2d 698 (Pa.Cmwlth. 1994) (failure to list equipment manufacturers not invalidate bid); *Conduit & Foundation Corp. v. City of Philadelphia*, 401 A.2d 376 (Pa.Cmwlth. 1970) (multiple listings of prospective suppliers of pumps and motors not aberration from bid specifications ?); *Metropolitan Messenger Services v. Commonwealth of Pennsylvania*, 317 A.2d 346 (Pa. Cmwlth. 1974) (failure to calculate bid in manner explicitly required not require bid rejection).]

A bid that does not conform or comply with all the bid specification requirements **cannot** be accepted or cured when (1) the effect of a waiver would deprive the School District of its assurance that the contract will be entered into, performed, and guaranteed according to its specified requirements; and (2) the non-compliance is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary standard of competition.

[*Marx v. Lake Lehman School District*, 817 A.2d 1242 (Pa. Cmwlth. 2003) (10-days requirement to submit performance bond after contract execution waivable); *Gaeta v. Ridley School District*, 788 A.2d 363 (Pa. 2002)(failure to submit a bid bond not waivable); *Cardiac Science, Inc. v. Department of General Services*, 808 A.2d 1029 (Pa. Cmwlth. 2002)(inclusion of FOB Factory condition, instead of required FOB Destination condition, made bid non-responsive); *Whitemarsh Township Authority v. Finelli Bros., Inc.* 184 A.2d 512 (Pa. 1962) (failure to sign a bid not waivable).]

**A. SCOPE**

This procedure covers the solicitation process for all goods and services procured by the District.

**B. POLICY**

It is the policy of the School District of Philadelphia to obtain competitive bids and proposals for materials, supplies, equipment and/or professional services where such bids or proposals are required by law or may bring about cost savings to the District.

**C. PROCEDURE**

The Advantage System (system) retrieves requisitions entered by the client or user department. The system groups the items on requisitions by commodity code.

The buyer reviews the Advantage system daily and indicates the type of solicitation as a phone bid (Request for Quotation) or Advertised Bid.

Depending on the commodity, Procurement Services determines the need and extent of coordinating with the user department to develop and issue the Bid package, Request for Quotation or Request for Proposal.

Prior to issuing the Bid package, Request for Quotation or Request for Proposal to the public, the buyer in coordination with the user department representative determines the factors for which the bid, quotation or proposal will be evaluated.

Depending on the commodity and dollar value of the solicitation, user groups shall be included in the evaluation of the bid or RFP.

Solicitation vehicles and methods:

- Up to \$5000 requires one (1) verbal price quote from a vendor.
- \$5001 to \$10,000 requires three (3) verbal quotes via a phone bid.
- \$10,001 to \$24,999 requires soliciting a minimum of three (3) written quotes via a Request for Quotation. See attached for a sample of the Request for Quotation form.
- \$25,000 and above requires solicitation via the Advertised Bid process. The Purchasing Department advertises and mails notification of the bid postings, opens, analyzes and submits resolutions for recommended contract awards to the SRC.
- Normally the Request for Proposal process is used for solicitations of transactions \$100,000 and above or when the School District deems it appropriate, or in its interest, to obtain proposals from vendors on the scope of work or specifications.

*[Public School Code, 24 P.S. §8-807.1; Board of Education Policy No. 610 Purchases Subject To Bid; Board of Education Policy No. 611 Purchases Budgeted; Pennsylvania Secretary of Education Mandate Waiver Program application approval letter dated 11/1/01.]*

Contracts for materials, supplies, and equipment to be furnished, sold or leased to the District (unless exempt by statute) having an aggregate value of more than \$25,000 are subject to the Advertised Bid or public competitive bid process.

*[Public School Code, 24 P.S. §8-807.1(a)-(b); Pennsylvania Secretary of Education Mandate Waiver Program application approval letter dated 11/1/01.]*

Contracts for professional services having an aggregate value of more than \$25,000 (**standard contracts**) must be submitted by a school or program office in resolution form to the SRC for consideration. Once the SRC has approved the resolution, the school or program office must submit the Agreement for Services, the SRC resolution authorizing the contract, the contractor's budget and description of work to the Office of General Counsel for review and necessary signatures. Contracts for professional

services having an aggregate value of \$25,000 and under (**limited contracts**) must be submitted, evaluated and approved by the Limited Contract Review Committee.

All contracts for work to be done (unless exempt by statute) having a value of more than \$4,000 shall also be subject to the competitive quote or bid process, except where such work is valued at less than \$5,000 and performed by District employees.

[*Public School Code*, 24 P.S. §§7-751(b) & (c); Board of Education Policy No. 610 *Purchases Subject To Bid*.]

Note: At the buyer's discretion, an Invited Bid may be used for transactions valued at \$20,000 and above or when the number of items on a requisition makes it inefficient to use a Request for Quotation.

To include the Minority/Women Owned business community, additional vendors may be added to the solicitation by the Purchasing department or the Office of Small Business Development.

For solicitations amounting to \$4,000 and under, vendors identified as Small Businesses shall be solicited to bid.

**SRC Suspension of Public School Code Bidding Requirements.** On December 21, 2001, pursuant to authority granted under section 691(c) of the Public School Code, 24 P.S. §6-691(c), the Secretary of Education of the Commonwealth of Education issued a certificate declaring The School District of Philadelphia to be in distress, and the School Reform Commission (SRC) was appointed pursuant to section 696 of the School Code, 24 P.S. §6-696. Under section 696 of the School Code, the SRC has the power to suspend the bidding requirements and provisions of section 807.1 of the Public School Code.

[*Committee to Keep Our Public Schools Public v. Schweiker*, 803 A.2d 869 (Pa. Cmwlth. 2002), *affd.*, 838 A.2d 565 (Pa. 2003); *Public School Code*, 24 P.S. §§6-691(c), 6-696(i)(3), & 8-807.1(a).]

**Cancellation of Invitation to Bid and Rejection of Bids.** An invitation to bid may be cancelled or any and all bids may be rejected, at any time prior to the time a contract is executed by all parties, when it is in the best interest of the School District. All invitations to bid should reserve to the School District the right to reject any or all bids, in whole or in part, when it is in the best interest of the School District. The reasons for the cancellation of the invitation to bid or rejection of the bids must be made a part of the contract file.

[*Midasco, Inc. v. Pennsylvania Turnpike Commission*, 813 A.2d 942 (Pa. Cmwlth. 2002); *Public School Code*, 24 P.S. §8-807.1(b); Pennsylvania

*Commonwealth Procurement Code*, 62 Pa.C.S.A. §521; Board of Education Policy No. 610 *Purchases Subject To Bid*.]

**No Bidding in Emergency Situations.** The SRC recognizes that emergencies may occur when imminent danger exists to persons or property or the continuance of existing school classes is threatened, and time for bidding cannot be provided because of the need for immediate action.

[Public School Code, 24 P.S. 6-696(i)(3); (Board of Education Policy No. 610 *Purchases Subject To Bid*.)]

**Specification Preparation.** Specifications for bids and proposals shall be prepared by the Purchasing Agent.

Bid and proposal specifications shall provide for alternates whenever possible. Alternate or alternative bids and specifications are permissible under Pennsylvania law.

[*Brener v. City of Philadelphia*, 157 A. 466 (Pa. 1931); *J.J.D. Urethane Co. v. Montgomery County*, 694 A.2d 368 (Pa. Cmwlth. 1997); Board of Education Policy No. 610 *Purchases Subject To Bid*.]

The Purchasing Agent shall combine like items of material, supply and/or equipment whenever feasible and permissible under Pennsylvania law. Split purchases shall not be made to avoid these requirements for bids or proposals.

[*Public School Code*, 24 P.S. §8-807.1(d); Board of Education Policy No. 610 *Purchases Subject To Bid*.]

**Pre-Qualification Plan.** Under Pennsylvania law, the SRC has the power to adopt or approve a pre-qualification plan or pre-qualification application (RFQ) process for contracts for materials, supplies, or equipment, and may authorize the School District to accept bids from, award contracts to, and enter into contracts with, only bidders that have been pre-qualified prior to bidding under a pre-qualification plan or through a pre-qualification RFQ process. A pre-qualification plan or pre-qualification RFQ process is a method for determining in advance of the bidding who are responsible bidders, and for refusing to receive bids from any others or award contracts to any others or enter into contracts with any others.

[*Corcoran v. City of Philadelphia*, 70 A.2d 621 (Pa. 1950); *Harris v. City of Philadelphia*, 149 A. 722 (Pa. 1930); SRC resolution #A-14 dated 12/15/04 (bid acceptance and contract award and entry with only pre-qualified prime construction contractors).]

## D. PURPOSE OF BIDDING REQUIREMENTS

The purpose of bidding requirements is to invite competition, and to guard against favoritism, improvidence, extravagance, fraud, and corruption in the award of public contracts, and to secure the best work or supplies at the lowest price practicable. Bidding requirements are enacted for the benefit of property holders and taxpayers, and not for the enrichment of bidders. Bidding requirements should be construed and administered to accomplish such purpose fairly and reasonably with sole reference to the public interest.

[*Yohe v. Lower Burrell*, 208 A.2d 847 (Pa. 1965).]

A fair opportunity must be afforded for free competition. The School District must prescribe a common standard on all matters that are material to the bids, so that interested persons may bid intelligently and will be induced to bid by the promise of impartiality. The School District cannot tolerate any scheme or device which promotes favoritism or unfairness, or which imposes limitations not applicable to all bidders alike.

[*Ezy Parks v. Larson*, 454 A.2d 928 (Pa. 1983).]

There must be previously prepared common specifications, terms, and conditions which are freely accessible to all potential bidders. Bidders must submit bids on an equal basis. The bids must be based upon common specifications, terms and conditions. The contract awards must conform to the common specifications, terms, and conditions on which the bids are taken.

[*Ezy Parks v. Larson*, 454 A.2d 928 (Pa. 1983); *Page v. King*, 131 A. 707 (Pa. 1926); *American Totalisator Co., Inc. v. Seligman*, 384 A.2d 242 (Pa. Cmwlth. 1977), *affd.*, 414 A.2d 1037 (Pa. 1980).]

## F. BID EVALUATION: RESPONSIBILITY AND RESPONSIVENESS

**Signed Bid.** A bid must be signed by the bidder, and failure to do so makes the bid non-responsive.

[*Whitemarsh Township Authority v. Finelli Bros., Inc.*, 184 A.2d 512 (Pa. 1962).]

**Bid Bond.** Bidder shall provide a bid bond for contracts for equipment and supplies, as bid security to guarantee its bid, in the amount or percentage of the bid as specified in the advertisement or invitation to bid. Because bid security is an essential part of a bid proposal, bidder's failure to furnish a bid bond when required makes its bid "non-responsive".

[*McIntosh Road Materials Co. v. Woolworth*, 74 A.2d 384 (Pa. 1950); *Harris v. Philadelphia*, 129 A. 460 (Pa. 1925).]

**Standards for Contract Award.** The Bid must be responsive to the bid or contract specifications or documents, and the Bidder must be responsible. Responsiveness means that the bidder must unequivocally offer to provide goods and services in conformity with the material terms of the bid solicitation, and the bid must facially meet the specifications of the contract. Responsiveness goes to whether a bidder has promised to perform in the precise manner requested. Responsibility means that the bidder must have the financial responsibility, integrity, experience in the industry, efficiency, promptness, faithfulness, and apparent ability and capacity to successfully perform the contract according to its terms, requirements, plans, or specifications. Responsibility involves an inquiry into the bidder's ability and will to perform the contract as promised.

[*Pierce-Phelps, Inc. v. Johnson*, 1993 U.S. Dist. Lexis 11284 (E.D.Pa. 1993); *Glasgow, Inc. v. Federal Highway Administration*, 1987 WL 28359 (E.D. Pa. 1987); *Kratz v. City of Allentown*, 155 A. 116 (Pa. 1931); *Wilson v. New Castle City*, 152 A. 102 (Pa. 1930).]

Bids shall be evaluated based on the requirements in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

[*Pennsylvania Commonwealth Procurement Code*, 62 Pa.C.S.A. §521(e).]

Contracts awarded during the public competitive bid process shall be let to the "lowest responsible and responsive" bidder upon resolution of the SRC, unless the SRC chooses to reject all bids.

[*Public School Code*, 24 P.S. §§8-807.1(a) & (b); *Pennsylvania Commonwealth Procurement Code*, 62 Pa.C.S.A. §512(g); Board of Education Policy No. 610 Purchases Subject To Bid.]

The SRC may select a single item from any bid for contract award.

[*Public School Code*, 24 P.S. §§8-807.1(b).]

**Discretion in Determining "Lowest Responsive and Responsible Bidder"**. The School District must exercise sound discretion in drawing up the terms of the contract, determining the "lowest responsible and responsive" bidder, and awarding the contract to the "lowest responsible and responsive" bidder. The School District must make a full and careful investigation into a bidder's responsibility when exercising its sound discretion.

[*Kratz v. City of Allentown*, 155 A. 116 (Pa. 1931); *Wilson v. New Castle City*, 152 A. 102 (Pa. 1930); *A. Pickett Construction, Inc. v. Luzerne County Convention Center Authority*, 738 A.2d 20 (Pa. Cmwlth. 1999).]

The School District is presumed to have acted in good faith when it determines the “lowest responsible and responsive” bidder for a contract award. Absent proof of bad faith, fraud, collusion, capricious action, or abuse of power, courts will not review or overturn the School District’s determination or disturb the contract award.

[*Weber v. Philadelphia*, 262 A.2d 297 (Pa. 1970); *Kimmel v. Lower Paxton Township*, 633 A.2d 1271 (Pa. Cmwlth. 1993), *app. denied*, 645 A.2d 1320 (Pa. 1994); *American Totalisator Co., Inc. v. Seligman*, 384 A.2d 242 (Pa. Cmwlth. 1977), *affd.*, 414 A.2d 1037 (Pa. 1980).]

The SRC retains the right to rescind an awarded contract, and award such contract to the next “lowest responsive and responsible” bidder or re-bid such contract when the bidder receiving the awarded contract fails to execute the awarded contract or provide the required performance bond or payment bond.

[*Nernberg v. Adams*, 544 A.2d 92 (Pa. Cmwlth. 1988); *Muncy Area School District v. Gardner*, 497 A.2d 683 (Pa. Cmwlth. 1985).]

#### **G. BID MODIFICATION OR WITHDRAWAL**

**Before Bid Opening.** Before bid opening, a bidder may modify or withdraw its bid, by written notice or in person, if its identity is made known and a receipt for the bid is signed.

**After Bid Opening.** A bidder is entitled to withdraw a bid after bid opening, without forfeiting its bid security, provided:

1. The price bid was submitted in good faith.
2. The bidder submits credible evidence that the reason for the price bid being substantially lower was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional and substantial arithmetical error, or an unintentional omission of a substantial quantity of work, labor, material, or services, made directly in the compilation of the bid.
3. The request for relief and supporting evidence must be written and must be received within two (2) business days after bid opening, but before award of the contract.
4. A bid withdrawal will not be permitted if the bid withdrawal would result in the award of the contract on another bid of the same bidder, its partner, or a corporation or business venture owned by or in which the bidder has a substantial interest.

5. If a bidder is permitted to withdraw its bid, the bidder cannot supply any material or labor or perform any subcontract or other work agreement for the awarded contractor or one of its subcontractors, without the written approval of the School District.

6. If a request for withdrawal is denied by the School District, and the bidder refuses to enter into a contract or to perform under the contract, the bid security of the bidder is forfeited to the School District as liquidated damages, and the bidder, or its surety if applicable, shall be liable to the School District for payment of these liquidated damages upon the School District's written demand.

After the School District receives a timely written request for bid withdrawal, the School District may (a) allow the bid withdrawal without contest and award the contract to the next lowest bidder, or (b) allow the bid withdrawal, reject all bids, and rebid the contract, or (c) contest the bidder's right to withdraw its bid.

If the School District rebids the contract, the withdrawing bidder shall be liable to the School District, upon its written demand, for immediate payment of the rebid costs (i.e., printing new contract documents, required advertising, and printing and mailing notices to prospective bidders) if the School District finds that such rebid costs would not have been incurred but for such bid withdrawal. The withdrawing bidder shall not be permitted to resubmit a bid for the rebid contract.

If the withdrawing bidder submits a request for bid withdrawal that complies with the "Bid Withdrawal" requirements above, but the School District contests its right to withdraw its bid, the School District must hold a hearing before a designated Hearing Officer within ten (10) business days after the bid opening, and issue an order allowing or denying the bidder's claim of such right within five (5) business days after the hearing. The School District must give the withdrawing bidder notice of the time and place of the hearing and the identity of the designated Hearing Officer within five (5) business days of the hearing. The School District must also make a stenographic record of all testimony and evidence presented at the hearing. The withdrawing bidder shall have the right to appeal the decision of the designated Hearing Officer to the courts of the Philadelphia County Court of Common Pleas.

[*Muncy Area School District v. Gardner*, 497 A.2d 683 (Pa. Cmwlth. 1985); Pennsylvania *Bid Withdrawal Act*, 73 P.S. §1601 et seq. (for construction, demolition, alteration, or repair of public building, work, or improvement, or services to or lease of real or personal property); Pennsylvania *Commonwealth Procurement Code*, 62 Pa.C.S.A. §512(f) (for Commonwealth of Pennsylvania agencies only).]

Clerical errors or mistakes include mistakes such as incorrectly transcribing prices from work sheets to bid forms, miscalculations in

addition or omissions to include the cost of certain items of work in the bid price. Errors in judgment include incorrectly estimating the labor hours necessary to complete the work or predicating a bid on a method of performance that cannot work. Bidders may be relieved from clerical errors or mistakes, but not errors of judgment.

#### **H. BID OPENING**

Bids shall be opened publicly by the Purchasing Agent before one or more witnesses at a previously designated time and place. The amount of each bid, together with the name of each bidder, shall be recorded.

[Pennsylvania *Commonwealth Procurement Code*, 62 Pa.C.S.A. §512(d); Board of Education Policy No. 610 *Purchases Subject To Bid*.]

When a public bid opening is conducted by the Office of Procurement Services, the buying staff will make competing bid information available to competitors upon request. The End User and/or a departmental representative also may attend a public bid opening, but may not be active participants. Once opened, the buyer will record the names of the suppliers that provided a bid, record the price information, and review all other support documents provided by the bidder. The bid opening is then closed.

#### **I. BID REVIEW**

The buyer then reviews the bids in detail. If the buyer has formed a product/service review committee to provide operational expertise in the supplier selection process, the buyer will share all bids received with the team members, coordinate the evaluation process, lead the team to a consensus decision, and make the award to the supplier that has offered the “lowest responsive” bid and is the “lowest responsible” bidder.

#### **J. BID REJECTION**

If the Senior Executive Vice President, Procurement Services concludes on the basis of all available evidence that a particular bidder appears to be insufficiently responsible to ensure adequate performance, the bid may be rejected, even though it is the lowest bid submitted. The Senior Executive Vice President, Procurement Services also retains the right to reject bids when costs are higher than budgetary constraints, when bids do not meet specifications, when the common standard requirement for the competitive bidding process would be violated, or when it is in the best interest of the District. The Senior Executive Vice President, Procurement Services, as well as the SRC, also retain the rights to withdraw acceptance of a bid, or reject any and all bids, or reject all bids and re-advertise for new bids and re-award contracts, when they find irregularities or defects in the

procurement process or solicitation, fraud, collusion, or other legally disqualifying error, or determine that is in the best interest of the District.

[*Weber v. City of Philadelphia*, 262 A.2d 297 (Pa. 1970); *R.S. Noonan, Inc. v. School District of City of York*, 162 A.2d 623 (Pa. 1960); *Midasco, Inc. v. Pennsylvania Turnpike Commission*, 813 A.2d 942 (Pa. Cmwlth. 2002); *City of Philadelphia v. Canteen Co.*, 581 A.2d 1009 (Pa. Cmwlth. 1990); *Public School Code*, 24 P.S. §8-807.1(b); Board of Education Policy No. 610 *Purchases Subject To Bid.*]

Such actions will not be reviewed or disturbed by courts absent proof of bad faith, fraud, collusion, capricious action, or abuse of discretion. Courts will not award a contract to another bidder or interfere with the School District's discretion and its legally reserved option to reject all bids.

[*American Totalisator Co., Inc. v. Seligman*, 414 A.2d 1037 (Pa. 1980); *Conduit and Foundation Corp. v. City of Philadelphia*, 401 A.2d (Pa. Cmwlth. 1979).]

## **K. BID AWARD**

The buyer receives the bid package including the spreadsheet from the ATs or the quotations according to the instructions given to the vendors.

Prior to issuing a Bid package, Request for Quotation or Request for Proposal to the public, the buyer in coordination with the user department representative determines the factors by which the package will be evaluated.

Awards of contracts resulting from RFPs shall depend on the evaluation criteria and their relative weighting identified prior to distributing the RFPs to the vendors.

Normally awards of purchase orders, contracts and bids are made on the basis of a low bid that meets specifications where all other factors including the item offered, kind, quality, material, terms, and delivery, are equal.

[*Public School Code*, 24 P.S. §8-807.1(b).]

The buyer will do the evaluation of the bids. An evaluation committee will review the proposals submitted by companies resulting from the RFP solicitation. Afterwards the buyer will forward the bids, quotations, RFPs and spreadsheets to the Office of Small Business Development, noting the recommendation for award. The Office of Small Business will review the bid and spreadsheet for compliance with the School District's Anti-Discrimination Policy.

Occasionally a contract will be awarded on the basis of other than a low bid or other factors including:

- Sole Source Item – performs a function for which no other item exists. Item is an integral part of a unit, piece of machinery or electro/mechanical system.

To qualify as a sole source item, the article must be sold by only one company.

- Delivery – no other vendor can meet the delivery date.
- All or none.
- Emergency – requirement is of an urgent need as in the case of a disaster or school emergency and does not permit competitive bidding.
- Award based on a contract previously bid and awarded having options for subsequent years.

[*Pennsylvania Commonwealth Procurement Code*, 62 Pa.C.S.A. §§515 & 516; Board of Education Policy No. 610 *Purchase Subject To Bid*; Board of Education Policy No. 612 *Purchases Not Budgeted*.]

In cases other than low bid, the buyer shall justify the basis of the award on the Award Other Than Low Bid Justification Sheet. See the attached sheet.

Depending on the contract or purchase order value, the Supervisor or Manager will review the basis for awarding the contract or purchase order on other than low bid.

When the SRC accepts the bid of a bidder and awards the contract to the bidder, the bidder becomes contractually obligated to the School District, and all of the terms of the contract are binding on the bidder from the date of SRC contract award. The School District can enforce the contract against the bidder receiving the SRC contract award from the date of contract award on, and the contract does **not** have to be fully executed for the School District to enforce it against such bidder.

[*Jay Township Authority v. Cummins*, 773 A.2d 828 (Pa. Cmwlth. 2001); *Muncy Area School District v. Gardner*, 497 A.2d 683 (Pa. Cmwlth. 1985); *Pan Building, Inc. v. Philadelphia Housing Authority*, C.A. No. 87-3912, 1989 U.S. Dist. LEXIS 991 (U.S.E.D. Pa. 2/2/89).]

## L. **NON-COLLUSION AND BID RIGGING**

**Definition of Bid-Rigging.** The concerted activity of two or more persons to determine in advance the winning bidder of a contract let or to be let for competitive bidding by a government agency.

**Prohibited Activities.** It is unlawful for any person to conspire, collude, or combine with another in order to commit or attempt to commit bid-rigging. Unlawful bid-rigging includes:

1. Agreeing to sell items or services at the same price.
2. Agreeing to submit identical bids.
3. Agreeing to rotate bids.
4. Agreeing to share profits with a contractor who does not submit the low bid.
5. Submitting prearranged bids, agreed-upon higher or lower bids or other complementary bids.
6. Agreeing to set up territories to restrict competition.
7. Agreeing not to submit bids.

**Simultaneous Bids.** It is not unlawful for the same person to simultaneously submit bids for the same work or a portion thereof, as a proposed prime contractor and subcontractor.

**Noncollusion Affidavits.** All ITBs and RFPs should include the requirement for bidders and vendors to provide a noncollusion affidavit with their bids or proposals. A form of a noncollusion affidavit is found in the Appendix of Forms. (See **Appendix H**) The noncollusion affidavit should state whether or not the person has been convicted or found liable for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three (3) years. The noncollusion affidavit should provide that the person's statement on the affidavit that he has been convicted or found liable for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three (3) years does not prohibit the School District from accepting a bid from or awarding a contract to that person but it may be grounds for:

1. Rejection of the bid or proposal on the basis of lack of responsibility; and/or
2. Suspension or debarment.

**Investigation.** Whenever Procurement suspects that a bidder may have engaged in bid-rigging or collusion activity, Procurement should refer the matter to the Office of General Counsel.

[Pennsylvania *Anti-Bid Rigging Act*, Pennsylvania *Commonwealth Procurement Code*, 62 Pa.C.S.A. §4501, *et seq.*].

M. **DISQUALIFICATION, SUSPENSION OR DEBARMENT OF BIDDERS**

The School District has the right to disqualify a bidder from submitting a bid for a particular contract or receiving award of a particular contract.

The School District also has the right to suspend a bidder, or debar a bidder, from bidding on School District contracts or receiving School District contract awards when the bidder has been suspended or debarred by another federal, state, or local government, or the bidder has **[add]**

The School District's policy and procedures for disqualification, suspension, or debarment of bidders are stated in School District Board Policy No. 621, "Disqualification, Suspension or Debarment of Bidders", attached to the Appendix of Forms. **(See Appendix I)**

[Board of Education Policy No. 621 *Disqualification, Suspension or Debarment of Bidders.*]

## IV. RFP SOLICITATION PROCEDURES

### A. WHAT IS A REQUEST FOR PROPOSAL (RFP)?

An RFP is a solicitation document requesting submittal of proposals in response to a scope of work. RFPs are used as an objective method of contracting for goods or services whereby formal proposals are solicited from qualified vendors. RFPs are generally used to select a vendor for a professional or consulting service, or to implement a system or program. Occasionally, RFPs are used for commodities, e.g. computers. If an RFP is your preferred method of procurement, this RFP process **MUST** be followed.

An RFP should not be used when the service or equipment to be contracted is standard or common "off the shelf" items. An RFP should not be used if there is an industry standard associated with the service or commodity to be contracted. RFPs are a very time consuming and potentially costly method of Procurement. As such, they should only be used when sealed bidding is not appropriate. An RFP does not need to specify in detail every aspect of how to accomplish or perform the services required.

### B. RFP PLANNING PROCESS: WHEN ARE RFPs PRACTICABLE/ADVANTAGEOUS?

#### 1. Planning Process.

RFP planning is important. In order to begin the RFP process, complete the *Request to Issue an RFP* form attached hereto in *Appendix C*. RFPs are scrutinized more closely due to the more subjective nature of vendor selection in comparison to a bid process. Compliance with this process and file management are CRITICAL to defend an evaluation decision. The *RFP Checklist* must be used to ensure compliance with proper RFP processes. See *RFP Checklist* attached hereto in *Appendix C*.

#### 2. When is an RFP Practicable?

A decision will be made to issue an RFP if it is determined to be practicable to the District. Factors to be considered in determining whether an RFP is practicable include:

- a. Estimated contract value is more than \$ 100,000.
- b. Requirement is highly technical, unusual, is not a standard "off the shelf" item, or there are no clear standards or specifications available to use in the solicitation.
- c. If the contract needs to be other than fixed-price type.

- d. If it may be necessary to conduct oral or written discussions with vendors concerning technical and price aspects of their proposals.
- e. If it may be necessary to afford vendors the opportunity to revise their proposals.
- f. If it may be necessary to base award on a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the District.
- g. If the primary consideration(s) in determining award may be factors other than price(s).

### **3. When is an RFP Advantageous?**

A decision will be made to issue an RFP if it is determined to be advantageous to the District. Factors to be considered in determining whether an RFP is advantageous include:

- a. If prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the District.
- b. The requirement is highly technical or complex in nature and would be more advantageous to the District to use the RFP method of source selection.
- c. If the factors listed in this section are more desirable than necessary in conducting a procurement; if they are, then such factors may be used to support a determination that the RFP is advantageous.

## **C. KEY RFP PARTICIPANTS**

### **1. User Department.**

In order to facilitate an easier RFP process, it is important for the User Department to first, submit a *Request to Issue an RFP* form to the Office of Procurement Services. This document should identify the project name; SRC Resolution No.; project manager; and project team members. This document should also have attached a draft Scope of Services; a list of potential vendors the User Department would like the Buyer to contact regarding the solicitation; and copies of the SRC Resolution and previous RFPs used for the same project.

In addition, the User Department will be responsible for the following:

- a. Reviewing drafts and returning them promptly.
- b. Sending representatives to the pre-submittal conference.
- c. Securing an Evaluation Committee committed to the evaluation process.
- d. Signing the *Confidentiality and Ethic Statements (Appendix C)* for the review of proposals received.

- e. Reviewing submitted responses to solicitation documents.
- f. Evaluating proposals.
- g. Assisting the Evaluation Committee in preparing a final recommendation to User Chief and Senior Executive Vice President, Procurement Services.

## **2. The Buyer.**

During the RFP process, it will be the responsibility of the Buyer assigned to the RFP to review the *Scope of Work* with the User Department's project manager, and assist if it is incomplete. Once the *Scope of Work* has been finalized, the Buyer will work to establish an appropriate timeline and keep the RFP on schedule. The Buyer will prepare a draft RFP for review by the User Department, Risk Management, and Small Business Development and incorporate comments into the document.

The Buyer will be responsible for advertising the solicitation and forwarding notices to prospective vendors; holding a pre-submittal conference; evaluating the documents for responsiveness; obtaining signed confidentiality forms from evaluators; and distributing copies of proposals and evaluation forms to User Department and other evaluators.

The Buyer will take the lead in scheduling and conducting evaluation committee meetings; providing instructions to evaluation committee; request review for M/WBE compliance for short list or finalist; inform the User Department of any issues that would affect the outcome of their decision of the selected vendor; and assist with SRC agenda preparation.

## **3. Office of Small Business Development.**

The Office of Small Business Development (SBD) will be primarily responsible for reviewing and approving M/WBE language in the RFP. SBD will also be responsible for attending the pre-submittal conference, answering M/WBE related questions and conducting an analysis of a vendor's M/WBE participation plan.

## **4. Risk Management.**

The Office of Risk Management will be responsible for reviewing insurance language in the RFP. They will also provide an analysis of vendor insurance documentation and assist Procurement Services in assuring vendor compliance with insurance requirements.

## **5. Evaluation Committee.**

The Evaluation Committee will be responsible for evaluating proposals submitted in response to the RFP and making recommendations for award. Committee members are required to execute a Confidentiality Statement

indicating his/her understanding that confidentiality must be maintained throughout the entire evaluation process.

## **6.. Legal Department.**

The Office of General Counsel (OGC) will review solicitation documents for proper legal form. OGC will also serve as a legal advisor on procurement legal issues and prepare final contracts for the selected vendor(s).

## **7. Consultants.**

During the RFP process, it is permissible for Consultants to provide professional expertise to the User Department as needed. Consultants are permitted to review documents, assist in the preparation of scope of work, and participate as a technical advisor. Consultants are required to execute a *Confidentiality Agreement* before participating in any evaluation participation.

If Consultants plan to respond to the solicitation, they are **NOT** permitted to prepare specifications or the Scope of Services. Consultants are not permitted to manage the entire solicitation process, or vote on Evaluation Committee final results.

## **D. DOLLAR THRESHOLDS FOR RFP's**

The RFP process should be considered when the total contract value of the goods/services is in excess of \$100,000.

## **E. CONTENT OF THE RFP**

Every RFP **MUST** be prepared using the *Master RFP Template* attached hereto in *Appendix C*. **NO EXCEPTIONS!!!** The Office of Procurement Services will maintain this template and make modifications to the standard language as deemed necessary. The User Department will only be responsible for developing the following sections of the RFP: **Introduction; Intent; Scope of Services; Schedule of Events; and Evaluation Criteria.**

**Common Standard.** There must be a common standard throughout the competitive RFP process. The RFP establishes the common standard that ensures just and fair competition among the vendors. A fair competition necessitates an understanding on the part of all competitors of the basis upon which the award of contract will be made. This is also essential to assure the proposals will be as responsive as possible so the District can obtain the best possible proposal. Common standard requires (1) previously prepared common specifications, terms, and conditions which are freely accessible to all competitors; (2) fair and equal treatment of

competitors throughout the competitive RFP process; (3) fair and equal treatment with respect to any opportunity for discussion and revision of proposals; (4) a common standard under which all competitive proposals will be received, evaluated, scored, negotiated, and revised; and (5) a common standard upon which an award of contract will be made. The same RFP specifications, information, and documents must be given to all vendors who want to submit proposals. The same additional or amended RFP specifications, information, and documents, and written answers to questions posed at pre-proposal conferences must be given to all vendors who have submitted proposals. All vendors who have submitted proposals must be given the same opportunity to negotiate with the District and to submit revised proposals to the District. The proposals of all vendors must be negotiated, evaluated, and scored by the District on the same basis.

[*Lasday v. Allegheny County*, 453 A.2d 949 (Pa. 1982); Commonwealth of Pennsylvania *Field Procurement Handbook*, Chapter 6, B. Competitive Sealed Proposals.]

## **F. EVALUATION PROCESS**

The RFP evaluation process must be conducted in a fair and objective manner. This requires the Evaluation Committee to review and evaluate all proposals in accordance with the specific criteria identified in the RFP. Additionally, complete confidentiality is an ethical and legal requirement, and is also vital to a fair and equitable evaluation process. Before proposals are received, the Project Manager serves as the sole technical contact for vendors. After proposals are submitted, all vendor contact is through Procurement Services or the Project Manager. All vendor information, the number of proposals received, subsequent results, and other evaluation proceedings are to remain confidential at all times.

Evaluation Committee members will be selected by the User Department and the Senior Executive Vice President, Procurement Services. Committees should have as a minimum one (1) member that is not part of the User Department and one (1) member from Procurement Services. Evaluation Committee members are required to sign a Procurement Integrity statement of confidentiality prior to evaluating proposals. Committee members shall score each proposal individually and independently, however group discussions are encouraged to discuss technical views to arrive at a better understanding of technical proposals during the evaluation process. The results of the scoring by the evaluating committee shall be totaled to determine the overall highest rated proposal. The suggested method for totaling scores is by each evaluators rankings of the proposals.

If interviews are part of the evaluation criteria, the RFP must contain language that allows for them and the criteria for evaluating the interviews

must be sent to the vendors that will be interviewed prior to the actual interview. The evaluation committee prior to entering into discussions with any vendors will make Competitive Range determinations. Any and all vendors determined to be within the competitive range must be given an opportunity to interview. Best and Final Offers may be requested at the conclusion of discussions, if discussions are determined necessary. All vendors shall be notified as to whether or not they were successful at the same time the successful or selected contractor is notified of their selection. All vendors are allowed to schedule a debriefing with the Senior Executive Vice President, Procurement Services to review the weaknesses and strengths of their proposal. The strengths and weaknesses of other proposals will not be discussed.

[Common Sense Adoption Services v. Department of Public Welfare, 799 A.2d 225 (Pa.Comm. 2002).]

#### **G. COMPETITIVE RANGE DETERMINATION**

The evaluation committee through the Senior Executive Vice President, Procurement Services shall determine which proposals are in the competitive range for the purpose of conducting written or oral discussions/interviews. The competitive range shall be determined on the basis of both cost and technical criteria stated in the RFP. The determination shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in fact within the competitive range, the proposal shall be included.

If the RFP initially solicits unpriced technical proposals, they shall be evaluated to determine which are acceptable to the District or could be, after discussion, be made acceptable. After necessary discussion of these technical proposals is completed, the evaluation selection committee shall request the price proposals from all vendors who submitted an acceptable technical proposal and make the award to the lowest responsible vendor.

#### **H. WRITTEN OR ORAL DISCUSSIONS**

If a contract award cannot be made on initial offers as submitted, the Evaluation Committee through the Senior Executive Vice President, Procurement Services shall conduct written or oral discussions with all responsible vendors within the competitive range. The following considerations should be used when conducting written or oral discussions with each vendor.

##### **1. Key Considerations**

- a. Advise the vendor of deficiencies in its proposal so the vendor is given an opportunity to satisfy the District's requirements.

- b. Attempt to resolve or clarify any uncertainties concerning their proposal.
- c. Resolve any suspected mistakes.
- d. If interviews are conducted as per the RFP, and questions are given out to each vendor, then the scoring of these questions must be clearly written in the RFP. If the scoring is not listed in the RFP then an amendment must be issued with the questions that clearly describes how the questions will be scored and evaluated. All vendors should be given the same questions and scored according to the RFP or Amendment. Note: If interviews are listed in the RFP then it is not a requirement to request Best and Final Offers, unless the interviews involve price or cost questions that would require a vendor to revise their prices. The evaluation criteria of the interviews must be clear to all vendors within the competitive range.
- e. Provide each vendor a reasonable opportunity to submit revisions to both their technical proposals and price proposals as discussed, by requiring submission of Best and Final Offers by each vendor within the competitive range at the conclusion of discussions. Note: Vendors should be reminded that Best and Final Offers are not mandatory. They are only an opportunity to revise if necessary.
- f. Provide the vendor a reasonable opportunity to discuss past performance information obtained from references. Names of individuals providing references information shall not be disclosed.

## **2. Mistakes to Avoid**

- a. The purpose of discussions is not to engage in technical leveling (helping a vendor bring proposal up to the level of others) of proposals.
- b. Do not use auction techniques such as indicating a cost or price a vendor must meet to be considered, advising a vendor of its price standing relative to the other vendors, or otherwise furnish information about other vendor's prices. Keep in mind that it is permissible to inform a vendor that his prices are unrealistic or too high.
- c. Do not inform a vendor of the number of vendors still within the competitive range.

### **I. BEST AND FINAL OFFERS**

Upon completion of oral discussions, the Evaluation Committee may issue to all vendors still within the competitive range a request for best and final offers. Oral requests for Best and Final Offers shall be confirmed in writing. This request shall include:

- Notification that discussions are concluded.
- Notification that this is an opportunity to submit a Best and Final Offer.
- A due date for submission of the Best and Final Offer.
- Notification that this is only an opportunity to revise their proposals. If they chose not to submit a Best and Final offer then their original proposal as submitted will be considered.

After receipt of Best and Final Offers, the Evaluation Committee shall evaluate them accordingly and recommend award be made to the vendor whose best and final offer is most advantageous to the District. This consideration includes price and the other factors included in the RFP.

**J. PROPOSAL PREPARATION TIME**

Proposal preparation time should be set to provide vendors 30 calendar days under normal circumstances to prepare and submit their proposals. The Senior Executive Vice President, Procurement Services may modify this requirement to require less time on less complicated requirements, but in no event will the period be less than 14 calendar days.

**K. PUBLIC NOTICE-ADVERTISEMENT**

Public Notice shall be given by advertising the RFP via publication, electronic mailing, or posting on the District's website.

**L. PRE-PROPOSAL CONFERENCE**

Pre-proposal conferences may be held. Any such conference should be held a minimum of 10 calendar days prior to the submission of initial proposals.

**M. AMENDMENTS TO RFP**

Amendments to Requests for Proposals may be made in accordance with Amendments to Invitation for Bids prior to submission of proposals. After submission of proposals, any amendments shall be distributed to all vendors who submitted proposals.

**N. MODIFICATION OR WITHDRAWAL OF PROPOSAL**

Proposals may be modified or withdrawn by any vendor prior to the established due date and time.

**O. RECEIPT OF PROPOSALS**

The time and date for receipt of Proposals will be included in the RFP. If a RFP is not received by the specified date, time and location, they will be

considered late and will not be accepted. Proposals will not be opened publicly, nor will the list of the names of proposers or the number of proposals received be released publicly until the evaluation process is completed.

**P. LATE PROPOSALS**

If proposals are submitted after the date, time and location identified in the RFP. It will be deemed non-responsive and not considered for review. However, the Senior Executive Vice President, Procurement Services reserves the right to accept late proposals if deemed in the best interest of the District.

**Q. WHAT IF ONLY ONE PROPOSAL IS RECEIVED?**

If only one proposal is received in response to a RFP, the Senior Executive Vice President, Procurement Services has the following options:

- a. Determine if there was sufficient time allotted for vendors to submit a proposal (if not, the solicitation may be amended to extend the receipt of proposal date and the only proposal received shall be returned unopened to the only vendor.
- b. Proceed with the evaluation of the proposal from the single vendor. If the offer meets the requirements of the District as stated in the RFP, and the cost is determined to be fair and reasonable through negotiations, an award may be made.
- c. If the Evaluation Committee that the only vendor does not meet our needs, or negotiations of the cost do not result in a fair and reasonable price, then the solicitation may be canceled and resolicited at a later date. If the solicitation is canceled, the proposal shall be returned to the vendor and the canceled solicitation file shall be appropriately documented.

**R. EVALUATION OF PROPOSALS**

All factors or criteria that will be used to evaluate proposals must be clearly set forth in the RFP. The RFP shall clearly define all evaluation factors or criteria in order of importance, including price. Numerical rating systems and/or weights may be used but are not mandatory to be listed in the RFP. However, the factors or criteria listed in the RFP must be listed in order of importance and the weights or points assigned by the evaluation committee prior to evaluating proposals, must follow the listed importance accordingly. The evaluators shall not consider factors or criteria that are not specified in the Request for Proposals when evaluating proposals. Selection for the award shall be conclusive based on scoring factors or criteria as specified in the RFP. The District reserves the right to enter into Contractual Negotiations with the highest ranked firm selected by the evaluation committee. If a mutual contractual relationship cannot

be established that will meet the District's needs, then the District reserves the right to enter into negotiations with the second highest ranked firm and so on.

*[Common Sense Adoption Services v. Department of Public Welfare, 799 A.2d 225 (Pa.Comm. 2002); Commonwealth of Pennsylvania Field Procurement Handbook, Chapter 6, B. Competitive Sealed Proposals.]*

#### **S. PROPOSAL DISCUSSIONS WITH INDIVIDUAL VENDORS**

Discussions are held to promote understanding of the District's requirements and the vendor's proposal, to facilitate arriving at a contract that will be most advantageous to the District taking into consideration price and the other evaluation factors set forth in the Request for Proposals. Vendors determined to be within the competitive range shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and prior to award, for the purpose of obtaining best and final offers. Auction techniques or disclosure of any information derived from competing proposals are prohibited. Any substantial oral clarification of a proposal shall be reduced to writing by the vendor.

#### **T. MISTAKES IN PROPOSALS**

When it appears from a review of the proposal before award that a mistake has been made, the vendor should be asked to confirm the proposal. If the vendor alleges mistake, the proposal may be corrected or withdrawn in accordance with rules governing mistakes in RFPs.

#### **U. AWARD OF CONTRACT**

Award shall be made to the responsible vendor whose proposal is determined to be most advantageous to the District, and in the best interest of the District, based on the evaluation factors or criteria set forth in the RFP. No other factors or criteria shall be used in the evaluation. If an evaluation committee is established, that committee may make that determination, or may make recommendation to other levels of the District organization and the Senior Executive Vice President, Procurement Services. The contract file shall contain the basis on which the award is made.

*[Statewide Building Maintenance, Inc. v. Pennsylvania Convention Center Authority, 635 A.2d 691 (Pa.Comm. 1993); Public School Code, 24 P.S. §6-696(e)(1); Board Policy No. 611 Purchases Budgeted.]*

## V. NOTIFYING UNSUCCESSFUL VENDORS

If requested, a vendor shall be debriefed and furnished the basis for the selection and award of the contract. Debriefings shall include the following information:

- a. Copies of the vendor's evaluation score sheets showing the strengths and weaknesses of their proposal as evaluated by the committee.
- b. The overall evaluated cost and technical rating of the winning contractor.
- c. The overall ranking of all vendors.
- d. A summary of the rationale for award.
- e. Answer any relevant questions about the process the vendor may have.
- f. DO NOT: Provide point by point comparisons of the debriefed vendor's proposal with those of other vendors, or any items listed in other vendors proposals that may be marked confidential or proprietary.

## V. EMERGENCY PURCHASES

Procurement defines emergencies as life safety hazards and/or the necessity of keeping vital equipment operative and/or preventing the deterioration of an experiment. The following procedures should be used for all situations requiring direct placement of emergency orders with a supplier:

- Quick orders
- Blanket orders
- Confirming orders

Individuals/departments may also contact the Senior Executive Vice President, Procurement Services to facilitate an emergency purchase internally or with an external supplier. If a situation such as a life safety hazard, keeping vital equipment operative, or preventing the deterioration of an experiment occurs during nonworking hours, including weekends and holidays, departments may immediately make the necessary purchase(s) directly with the supplier (by phone or by pickup at the store). A confirming requisition **MUST** be processed the next business day; the Purchasing department will forward to the supplier a confirming order.

## VI. PURCHASES BUDGETED

### A. PURPOSE

In the interests of economy, fairness and efficiency in its business dealings, the SRC requires that items commonly used by schools, or units thereof, be standardized whenever possible. Additionally, equal opportunity must be provided to as many responsible vendors as possible in order to do business with the District. Lists of potential vendors for various types of supplies,

equipment and professional services will be developed and maintained. No purchase request will be honored unless it has been made on a District approved requisition form and has the necessary approval signatures. Upon the placement of a purchase order, the Purchasing Agent shall encumber the expenditure against a specific budget line item to guard against the creation of liabilities in excess of appropriations.

## **B. POLICY**

It is the policy of the School District that when funds are available, all purchases (not subject to bid) contemplated within the current budget be made in the best interest of the District.

## **C. PROCEDURES**

All purchases within budgetary limits and originally contemplated within the budget may be made upon authorization of the Purchasing Agent. If the contemplated purchase exceeds \$25,000, prior approval is required from the SRC.

All purchase requests must be referred to the Purchasing Agent who shall ensure: 1) whether the contemplated purchase is subject to bid; 2) whether sufficient funds exist in the budget; and 3) whether the desired purchase material is available elsewhere in the District.

Wherever possible, a reasonable effort shall be made to obtain at least three written quotations from qualified vendors for the purchase of supplies, equipment or professional services where the contemplated expenditure is less than \$25,000 in cooperative purchases. All written quotations received shall be attached to and retained with a copy of the resulting purchase order.

[Public School Code, 24 P.S. §8-807.1; Board Policy No. 611 Purchases Budgeted; Pa. Secretary of Education Mandate Waiver Program application approval letter dated 11/1/01.]

## **VII. BID PROTEST PROCEDURES**

### **A. Who May File the Protest?**

Any bidder, offeror, prospective bidder, prospective offeror or a prospective contractor who is aggrieved in connection with the solicitation or award of a contract may file a protest. Protest relating to a cancellation of invitations for bids or requests for proposals and protest relating to the rejection of all bids or proposals will not be considered. **NO EXCEPTIONS!!!**

## **B. Time For Filing.**

1. If a protest is submitted by a prospective bidder or prospective contractor, the protest must be filed before bid opening time or proposal receipt date.
2. If a protest is filed by a bidder, offeror or prospective contractor, the protest must be filed within seven (7) days after the protesting bidder, offeror or prospective contractor knew or should have known the facts giving the rise to the protest. EXCEPTION: IN NO EVENT MAY A PROTEST BE FILED LATER THAN SEVEN (7) DAYS AFTER THE DATE THE CONTRACT WAS AWARDED. Awards will be timely posted on the Office of Procurement (OPS) website.
3. Untimely filed protests will be disregarded by OPS.

## **C. Form of Protest**

1. A Bid protest must be in writing and filed with the Buyer responsible for the respective Bid.
2. A Bid protest must state each and every ground upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived and may not be raised on appeal.
3. The protesting party may not submit with the protest any documents or information deemed relevant.

## **D. Notice of Protest.**

If award has been made, OPS shall notify the successful bidder or contractor of the protest. If the protest is received before award and substantial issues are raised by the protest, all bidders and offerors who appear to have a substantial and reasonable prospect of winning the award shall be notified and may file their agreement/disagreement with OPS within five (5) days after receipt of notice of protest.

## **E. Stay of Procurement.**

Upon receipt of the Bid protest, the Senior Executive Vice President, Procurement Services shall immediately decide whether the protest is timely received. If so, the Senior Executive Vice President, Procurement Services shall determine if the solicitation or award shall be stayed. If the contract performance has already begun, the Senior Executive Vice President, Procurement Services shall determine whether the performance of the contract should be suspended. After examination of the issues

surrounding the Bid protest, the Senior Executive Vice President, Procurement Services will issue a written communication determining whether the protest has merit and whether further action is necessary to protect the interests of the District.

**F. Miscellaneous.**

1. **Senior Executive Vice President, Procurement Services Response.** Within fifteen (15) days of the receipt of a protest, the CPO shall submit a written response to the protestor and other District officials as appropriate. The response may include any documentation deemed relevant to the protest.
2. **Protesting Party Reply.** Within ten (10) days of the date of the CPO Response, the protesting party may file a written reply to the CPO.
3. **Review.** The Senior Executive Vice President, Procurement Services shall:
  - a. Review the protest and any response of reply.
  - b. Request and review any additional documents or information deemed necessary to render a decision.
  - c. Consult with appropriate District officials and provide them the opportunity to review and address any additional documents or information related to the protest.
  - d. Within sixty (60) days of the receipt of the protest, issue a written determination stating the reason for the decision.
  - e. If additional time is required to investigate the protest, inform the protesting party of the additional time needed to render a determination and obtain the protesting party's consent.
4. **“Clearly Without Merit” Determinations.** If the Senior Executive Vice President, Procurement Services determines, upon receipt, that the protest is clearly without merit and does not stay the procurement, the Senior Executive Vice President, Procurement Services shall immediately issue the decision as required by Section H below.

**G. Settlement.** The Office of General Counsel has the authority to settle and resolve bid protests.

**H. Decision.** The Senior Executive Vice President, Procurement Services shall promptly, but in no event later than sixty (60) days from the filing of the protest, issue a written decision. The decision shall:

1. State the reason for the decision; and
2. Inform the protesting party of its right to pursue any legal action they deem appropriate.

I. **Remedy Before Execution of Contract.** If, before execution of a contract, it is determined that a solicitation or proposed award of a contract was in violation of law, the Senior Executive Vice President, Procurement Services may do one of the following.

1. Cancel the solicitation.
2. Change the solicitation to comply with the law;
3. Reject all bids or proposals or those parts of the bids or proposals which were affected by the violation; or
4. Change or cancel the award to comply with the law.

J. **Remedies After Execution of Contract.** If, after the execution of a contract, it is determined that a solicitation or award of a contract was in violation of law:

1. If the contractor did not act fraudulently or in bad faith, the contract may be:
  - a. Ratified and affirmed provided it is determined that by the Department that doing so is in the best interest of the Commonwealth.
  - b. Modified to comply with the law with the consent of all parties.
  - c. Cancelled and the contractor shall be compensated for the actual expenses reasonably incurred under the contract prior to termination. Such compensation shall not include loss of anticipated profit, loss of use of money, or administrative or overhead costs.
2. If the contractor has acted fraudulently or in bad faith, the contract may be:
  - a. Declared void.
  - b. Modified to comply with law with the consent of all parties.
  - c. Ratified and affirmed, if the Department determines that it is in the best interests of the Commonwealth, and without prejudice to the right of the agency to damages, as may be appropriate.

## VIII. RETURNED BID PROCEDURES

### A. POLICY

No bid shall be returned to a vendor until it has been determined by either the Buyer Supervisor, Procurement Manager or Senior Executive Vice President, Procurement Services that the bid was submitted after the specified due date and/or time.

### B. PROCEDURES:

Step 1: The Clerk shall ensure the correct due date is stamped on the return envelope **before** it is mailed to a vendor.

Step 2: The receptionist AT shall **immediately** time-stamp bids once they have been received.

Step 3: The receptionist AT shall complete log entry for **each** bid in the *Bid Tracking Log* **and** *Bid Receiving Log*. The Bid Tracking Log will be housed and maintained at the front desk. The Bid Receiving Log will be attached to the bid folder.

Step 4: The receptionist AT shall place bid in the bid drawer until it is to be retrieved on the bid opening date.

Step 5: Bids received **after** the specified due date and/or time, **must** be given to the Buyer Supervisor. He will then advise the Buyer, Procurement Manager and Senior Executive Vice President, Procurement Services.

Step 6: If it is determined the bid was submitted after the specified due date and/or time, the Buyer Supervisor will sign a cover letter enclosing the returned bid to the vendor. Copies of the return letter will be provided to the Buyer, Procurement Manager and Senior Executive Vice President, Procurement Services. A copy of the return letter will be filed in the bid folder.

## IX. VENDOR'S PROCEDURES

### A. PURCHASING

The Purchasing Division is responsible for procuring all goods, services, supplies, books and utilities necessary for the operation of the School District. Within the framework provided by the Pennsylvania School Code, Article VIII, Section 801 through 810 (*See Appendix D*) and Board policy, it purchases supplies, furniture, equipment, textbooks, food and

services when required. As such, the Office of Procurement Services requires that each vendor who seeks to do business with the SDP subscribe to the *Vendor Code of Ethics* attached hereto as **Exhibit E**.

In order to receive bids via the electronic mail (e-mail), vendors must be a registered vendor within the Purchasing Division's operating system. The procurement procedure along with bid thresholds, rules and regulations are explained below.

The Office of Procurement Services is the central purchasing and materials management agency for the School District of Philadelphia.

OPS is comprised of five divisions:

- 1) Purchasing.
- 2) Office of Small Business Development.
- 3) Financial and Technical Solutions.

This guide is intended to assist vendors in doing business with the School District. It is not a complete or legal description of the rules, regulations, policies and procedures governing the procurement process and does not replace or supersede the terms and conditions set forth in a specific bid. Notwithstanding anything contained herein, bidders must strictly adhere to the instructions, conditions of bidding, specifications and contract terms and conditions set forth in each individual bid solicitation to which they respond. Information concerning the Office of Procurement Services can be obtained by one of the venues as described below:

- 1) Visit our website at: [www.phila.k12.pa.us/purchasing](http://www.phila.k12.pa.us/purchasing).
- 2) Visit us at the Education Center, 440 N. Broad Street, Philadelphia, PA 19130 (see our website for directions).
- 3) Email us at: [purchasing@phila.k12.pa.us](mailto:purchasing@phila.k12.pa.us).

Bids for construction projects are prepared and processed through the Design and Construction Services of the Office of Facilities Management Services. This department prepares the design documents, initiates the advertisement schedules and opens bids for new and improvement construction work. The advertising procedures are as prescribed by the Pennsylvania School Code. Information concerning construction and renovation bidding procedures can be obtained by calling this department directly at 215.875.3950.

## **B. VENDOR INFORMATION AND REQUIREMENTS**

The Office of Procurement Services maintains a bid mailing list for most of the products and services that it purchases. Placement on a mailing list does not mean the School District considers your firm to be a "responsible" bidder. The SCHOOL DISTRICT evaluates "responsibility" on an individual bid-by-bid basis as noted in the section entitled "Bidder

Qualifications." If you wish to be placed on a mailing list to receive bid invitations, please prepare a letter describing your commodities or services and send to the address below or simply go to our website and click "Bidder Application Form" and complete on-line:

Office of Procurement Services  
440 N. Broad Street  
Philadelphia, PA 19130

Please note that due to the extensive listing of vendors on mailing lists the Office of Procurement Services does not guarantee that you will receive an invitation to bid. Furthermore, errors in mailing lists, delays in the mail system and misrouting of mail at vendor locations may contribute to non delivery or late delivery of invitations to bid sent to vendors. It is therefore in your best interest to read the proposal section of the website at [www.phila.k12.pa.us/purchasing](http://www.phila.k12.pa.us/purchasing), or the following newspapers to keep informed of current bids:

Philadelphia Weekly	The Public Record	AL Diá
South Philadelphia Review	Philadelphia Sunday Sun	El Sol
The Evening Bulletin	Philadelphia Tribune	The World Journal
South West Philadelphia Review		

#### **C. CHANGES IN MAILING LIST**

Vendors should keep the Office of Procurement Services informed of changes that should be made to our vendor information file to assure prompt receipt of invitations to bid and other communications. Incidental correspondence and/or bids received with different addresses will not be considered as requests for changes. Changes in vendor information on file with the Office of Procurement Services (such as company name, address or services, supplies and equipment you wish to furnish) can only be accomplished by writing to the Office of Procurement Services or via email at [purchasing@phila.k12.pa.us](mailto:purchasing@phila.k12.pa.us). If you prefer to use a Post Office box, the School District will mail to the box; however, the street address, city and state of your place of business must be used in response to a bid invitation.

#### **D. THE BID PROCESS**

The School District has three types of bids, each of which have different terms and conditions:

- Services bids which request a quotation for the provision of a specific service;
- Supplies and equipment bids which request a quotation for the provision of a particular commodity;

- Surplus property bids which offer for sale "as is" surplus School District equipment or supplies to the highest bidder.

The School District has two classes of competitive bids for procurements involving services, supplies and equipment:

- Invited bids are for amounts less than \$25,000 and are not posted or advertised and are mailed to those vendors who have responded to previous solicitations.
- Advertised bids are for amounts of \$25,000 and over and are advertised in the three previously mentioned newspapers. These bids are also sent to those who have responded to previous solicitations. These bids are also posted on the website of the School District of Philadelphia.

#### **E. BID SPECIFICATIONS**

Each bid invitation included formal specifications which define the project or service being purchased. To the greatest extent possible, the School District uses generic type specifications to encourage competition and no deviation from the specification will be permitted.

Unless otherwise specified, whenever catalogs, model numbers, trade names or cuts are included, they are for reference/informational purposes only. In such an instance a bidder may offer an article which it certifies to be equal in quality, performance, essential characteristics and meets the specifications of the referenced article. The Office of Procurement Services has the final decision on whether such an offering is acceptable. Where a bidder proposes to furnish an article and/or service which it certifies to be equal to that specified, the bidder must set forth on a separate document enclosed with the bid, a complete description of the article and/or service proposed to be furnished. If this is not done, the bidder will be required to furnish a sample of the article and/or service referenced in the bid invitation.

When completing your bid, always follow the specifications and terms exactly, otherwise your bid will be disqualified. Counter offers, deviations and/or exceptions to the specification or terms normally result in bid disqualification.

#### **F. PRE-BID CONFERENCES**

On occasion, the bid invitation will specify a date, time and location for a pre-bid opening conference. It is to your advantage to attend these meetings as they provide you with an opportunity to discuss any aspect of the bid invitation which is unclear to you. In those instances where attendance at the pre-bid opening conference is specified to be mandatory,

you will not be eligible to bid or receive an award unless you attend the conference.

**G. ADDENDA AND CHANGES**

At times, it is necessary to make changes to a bid. When this occurs, a written addendum will be mailed to all vendors on the bid mailing list for the goods or service solicited. These changes become an integral part of the bid documents.

**H. BID BONDS: (EQUIPMENT AND SUPPLIES)**

As a general rule, the School District does not require a bid bond. The bid bond is replaced with a "confession of judgment" clause in all bids/contracts. It is explained on each contract form in Paragraph 4B under conditions of bidding. There are some exceptions where a bid bond is required as a condition of bidding or contract performance. When special bonding is required, the type and amount are specified.

**I. BID INFORMATION**

You may attend bid openings and request that specific bids be read. This is your opportunity to obtain bid information prior to award. After the bid opening, while bids are under review, no information concerning the bids received will be released. The review process is intended to avoid errors and insure careful consideration of each bid submitted. If you ask about bids during the School District's review process, you will be told "the bid is under review." Our staff is under specific instructions to say nothing else, so please do not persist.

Award of an invited bid is usually made within 1-3 weeks of the bid opening and an advertised bid 4-8 weeks from the bid opening date. Once an award is made, vendors may obtain bid and award information by visiting the Office of Procurement Services. No bid or award information will be given out over the telephone.

**J. MAILING OF BIDS**

**BIDS MUST BE SUBMITTED ON THE FORM PROVIDED AND MUST BE SIGNED AND SEALED IN THE RETURN ENVELOPE WITH THE BID NUMBER CLEARLY WRITTEN ON THE ENVELOPE.** If using an overnight carrier, the bid number, name and bid opening date must be prominently displayed on the outside of the envelope. Bid submittals may also be delivered by hand to the Office of Materials Management, Monday to Friday between the hours of 8:00 a.m. to 3:30 p.m. The Office is located at the address below. Directions can be found on the Office website.

## **K. BID TERMS AND CONDITIONS**

### **1. Discounts**

If you offer a discount for prompt payment, please indicate this in the space provided in the bid form. Your offer to discount must be for a period of no less than 15 days. Do not use the "Cash Discount" section to provide other than a discount for prompt payment. If you specify payment terms other than an acceptable discount then payment will be made according to the School District's standard payment process. Payment discounts are not considered in the bid evaluation process and award determination.

### **2. Errors in Bidding**

If an error is made in bidding, you must notify the Office of Procurement Services in writing within two business days after the bid opening. The District will not permit a bid to be withdrawn because of a mistake after the bid opening except as provided under Pennsylvania law. [See Section VIII., Paragraph G.]

### **3. Duration of Bid**

As stated in the conditions of bidding, your bids for supplies, equipment and services once opened, is valid for a period of ninety (90) days from date of bid opening.

### **4. Improper Bid Withdrawals**

Except as otherwise provided under Pennsylvania law, no bid, once opened, may be withdrawn. [See Section VIII., Paragraph G.] In the event that a bidder, who is not legally released from their bid, fails to execute a contract in accordance with their bid or refuses to furnish the required bonds and/or insurance, the School District may take one or more of the following actions:

- School District will exercise its right to secure the goods from the next lowest responsive and responsible bidder and proceed to recover damages as is under Pennsylvania State Law;
- Remove the firm's name from all School District mailing lists;
- Declare the firm to be "not a responsive and responsible bidder" and disqualify it from doing business with the School District in any capacity;
- Bidder will forfeit bid bond or bid deposit if applicable;
- Exercise any other rights the School District may have by law.

*Given these circumstances, always check and recheck your bid. Make sure the figures you submit are accurate because you will be held accountable for them.*

## **5. Purchase Orders (P.O.)**

Pursuant to the bid award, the School District issues a purchase order that details the actual items being purchased including quantity, terms, bid reference, delivery instructions and location. To insure that funds are always available to pay its obligations, the School District utilizes a purchase order encumbrance and certification system, whereby each purchase order is budgeted, checked and reviewed prior to issuance.

Delivery of goods or services must be made in accordance with the terms of the bid contract and purchase order. Under no circumstances should delivery be made prior to the receipt of a purchase order. Vendors who deliver prior to the issuance of a purchase order run the risk that they will not be paid. The only exception to this is when an emergency request is made directly by the Purchasing Department and an authorization letter is issued. Delivery of goods and services should be coordinated with the District agency to whom the goods or services are to be furnished.

## **L. BID EVALUATION**

Under the terms of the Pennsylvania School Code, bids are awarded to the “lowest responsible bidder, meeting specifications, i.e., “lowest responsive and responsible bidder”. Bids are not simply awarded to the firm that submits the lowest price. In determining “responsibility”, the District will normally consider such factors as the bidder's prior performance experience, resources, technical and financial ability to perform. Bids submitted must also be “responsive” to all the requirements of the bid, which include:

- Submitting proper bid bonds when required;
- Submitting a complete bid (including all pages and correct signatures on School District bid form);
- Responding precisely to the specifications;
- Financial stability of the company;
- Meeting all the requirements of the specifications;
- Properly signing the bid and submitting company information on page 1.

Deficiency on any one of these points may lead to disqualification of the bid.

## **M. REBIDS**

The School District has the right to reject any and all bids submitted and either rebid the items desired or cancel the bid entirely. Most common reasons for rebidding are: to obtain better pricing, poor response from vendors or the initial bid reveals a need to revise specification. A bid may also be canceled in its entirety, usually because the goods and services are no longer required by the School District. In most rebids or cancellations, the School District does not send out a separate notification indicating the action being taken or the reason for it. This information is, however, on file.

## **N. THE CONTRACT PROCESS**

### **1. Award Notification**

Vendors are notified that they have been awarded a bid in one of two ways depending on the type of bid.

- For awards valued at \$25,000 and over, the vendor will be sent an award letter notifying the firm of the award and detailing the remaining steps necessary to complete the contract process and permit the issuance of a purchase order. The award notification is not a notice to proceed. Do not deliver goods or proceed with any work until you receive an executed purchase order which will contain appropriate instructions.
- For awards under \$25,000, the vendor will be sent a purchase order.

### **2. Performance Bonds**

When required by specifications, the next step in completing the contract process is for the successful bidder to obtain and submit a performance bond. Performance bonds guarantee that the successful bidder will faithfully perform the work or deliver the materials in strict compliance with the terms of the contract.

Please don't confuse the requirement for bid bonding with the requirement for a performance bond. Bid bonding guarantees that the vendor will honor the bid and furnish all required documents if awarded the contract; the performance bond insures that the vendor will perform according to the contract.

### **3. Packing Slips/Proof of Delivery**

Packing slips/proof of delivery must accompany the delivery of goods. Service slips must contain the specific information indicated on the purchase order to verify service was satisfactorily performed. Failure to

do so could significantly delay payment. It is helpful if the District purchase order number is on the slip.

## O. PAYMENT PROCESS

It is responsibility of the vendor to invoice the District for goods delivered and services rendered. All invoices must contain the specific information indicated on the purchase order. The unit of issue cited on the invoice must agree with that cited on the purchase order, failure to do so could significantly delay payment. *The most common mistakes on invoices are to omit the purchase order number.* Unless directed otherwise, all invoices should be sent to:

School District of Philadelphia  
Accounts Payable  
440 N. Broad Street  
Philadelphia, PA 19130

### 1. Payment

The School District customarily renders payment in 30 days following acceptance of the goods or services.

The School District uses a three way matching payment process to ensure accurate payments and protect the taxpayer. All invoices are rendered to a central accounts payable section. Based on the services or goods received, the department/school receiving the items prepares and forwards via computer a payment authorization to the same central accounts payable section. The accounts payable section then matches the information on the invoice, the information on the purchase order and the information on the payment authorization section. If the information matches on all three documents, payment is made. If these documents do not match, process is initiated to determine the correct information and obtain the authorization for payment.

If you have a problem with payment you should first inquire of the department/school to which the goods were delivered or the services rendered to verify that they have processed the authorization for payment. All other inquiries should be directed to the **Accounts Payable Division at 215-400-4000.**

### 2. Split Awards, Item Deletions, "All or Nothing" Bids

It is the general practice of the District to make awards on an item-by-item basis. This is usually done when items are not part of an integrated set or system and the District can obtain better prices without sacrificing delivery or service. The District may decide after the bid opening that it isn't going to award an item. When vendors

state that they are bidding on an "all or nothing" basis, they run the risk of not being awarded anything.

### **3. Bidder Disqualification**

Vendors may be disqualified from doing business with the District and have their names removed from the mailing list for a number of reasons including, but not limited to:

- Failure to deliver or comply with the specifications and/or the contract terms and conditions;
- Failure to deliver or perform on a timely basis;
- Offering any gift, gratuity, favor or advantage present or future, to any School District employee exercising procurement responsibility. This includes extending any discount or privilege not available to all School District employees;

[Public School Code, 24 P.S. §8-809.]

- Failing to disclose a conflict of interest in a bid or contract;
- Conviction of any criminal offense involving public contracting.

This is explained in Board of Education Policies #120 and #621, which are available upon request.

### **4. Overshipments**

Unless the contract or purchase order provides for it, the District does not accept overshipments. If delivered, overshipments must be picked up by the vendor, returned at the vendor's expense (freight collect) or may be declared abandoned.

## **P. OFFICE OF SMALL BUSINESS DEVELOPMENT (SBD)**

The Small Business Development division in the Office of Procurement Services is responsible for promoting equal opportunity for small, minority and woman-owned business enterprises in all contracts with the School District of Philadelphia. The office engages in developing and implementing procedures for increasing the number of local small, minority, and woman-owned businesses bidding on and ultimately awarded School District of Philadelphia contracts. These procedures include eliminating practices and procedures that restrict the ability of M/WBE firms to compete for contracts; developing and maintaining relationships with the minority business communities; providing technical assistance on doing business with the School District of Philadelphia; developing training activities for School District of Philadelphia staff; and communicating the

School District of Philadelphia's commitment to equal opportunity to all School District of Philadelphia staff.

## **1. Anti-Discrimination Policy**

The Anti-Discrimination Policy was adopted to formalize the commitment of the School Reform Commission to fair and equal access of contracting opportunities with the District. The adoption of policy will provide the framework for developing procedures to ensure that contracts, suppliers, vendors and consultants with whom the School District does business reflects the community it serves. The policy applies to publicly awarded contracts for design, development, construction, supplies, services, equipment and professional services.

## **2. M/WBE Certification**

The School District does not certify M/WBEs. The School District accepts the certification of approved certifying agencies including local, state and federal governments. To begin registration, complete the Business Data Form located on the Small Business Development webpage at: [www.phila.k12.pa.us/purchasing](http://www.phila.k12.pa.us/purchasing).

For information and assistance call (215) 400-5374.

## **Q. SURPLUS PROPERTY**

Bids are publicly invited by the School District of Philadelphia for surplus personal property, materials, equipment and supplies. The disposal is usually carried out either by auction or by sealed bid. Items include automobiles, trucks, vans and typewriters. Proposals are advertised, mailed to those on the appropriate surplus mailing list and made available at the Office of Procurement Services.

## **R. WHAT TO DO IF YOU HAVE A PROBLEM?**

The Office of Procurement Services issues over 31,000 purchase orders per year. Deliveries are made to over 300 separate delivery points.

Given the size and complexity of the procurement system some errors and problems will occur, but patience and understanding will usually overcome these situations.

## **S. PROFESSIONAL SERVICES**

Contracting for professional or consulting services is the responsibility of the individual School District departments. The School District does not maintain any central mailing list for the distribution of requests for professional services. If

you are interested in providing a professional service, you should contact the department(s) directly that you believe can best use your type of service.

As a guide to the overall needs of the District, the following is a list of commodities has been compiled:

<b>COMMODITY LISTING</b>		
<b>SUPPLIES, FURNITURE AND EQUIPMENT</b>		
Acids and Chemicals	Art Supplies	Athletic Supplies
Audio-Visual Equipment	Audio-Visual Equipment	Automotive Supplies
Boiler Tubes and Sections	Chairs and Desks-Classroom	Classroom, Stationery
Cleaning Chemicals	Continuous Forms for Data Processing	Copier Rental
Data Processing Equipment	Data Processing Equipment	Data Processing Supplies
Duplicating Machines	Duplicating Supplies	Educational Training Systems
Electrical Supplies	Electronic Supplies	Fax Machines
Floor Covering	Floor Covering	Food Service Equipment
Fuel Oil	Garden and Lawn Equipment	Gasoline
General Custodial Supplies	Heating, Ventilation and Refrigeration Supplies	Home Economics Supplies
Kindergarten Supplies	Lamps	Library Supplies
Locks and Lock Parts	Lumber and Related Supplies	Major Appliances
Medical Supplies	Microcomputers	Mill Supplies
Music Supplies	Office Furniture	Paper
Plumbing and Heating	Polyliners	Printing and Binding
Printing and jobbing	Projectors	Radios and Televisions
Safety Supplies	Science Supplies and Office Supplies	Tools
Trucks and Buses	Typewriters	Vocational Education Supplies
<b>SERVICE</b>		
Electric Motor Repairs	Kitchen Equipment and Refrigeration Repair	Laundry-Child Care Centers
Microcomputer Repair	Musical Instrument Repair	Printing of Brochures, Forms and Newsletters
Printing Optical Scan Forms	School Bus Service	Temporary Help-Food Service Workers
Temporary Help-Food Service Workers	Temporary Help-Security Guards	Temporary Help-Clerical/Office Workers
Turkish Towels Rental	Typewriter Repair	Uniform Rental and laundry
<b>FOOD AND RELATED ITEMS</b>		
Bread and Rolls	Breakfast Cereals	Chilled Juice
Disposables and Detergents	Emergency Lunches, Shelf Storage	Fresh Fruit
Fruit Drinks	Grains	Ice Cream
Laboratory Analysis	Milk	Pizza and Pasta Products
Plasticware	Prepacked Meals	Pretzels, Frozen
Snack Foods	Soft Drinks	Sweet Goods
<b>TEXTBOOKS</b>		
Library Books	Subscriptions	

## **X. MINORITY/SMALL BUSINESS DEVELOPMENT**

### **A. INTRODUCTION**

This procedural manual provides the procedures for carrying out the Anti-Discrimination Policy (the “Policy”) of the School District of Philadelphia (the District) adopted by the School Reform Commission on March 12, 2003.

The Policy, which was adopted to ensure equal opportunity in all contracts let by the District, applies to all departments and divisions of the District and all contractors, vendors and consultants who seek to do business with the District. Therefore all bids, requests for proposals (RFP) and requests for quotations (RFQ) developed for procurement of supplies, services & equipment, design & construction services, and resolutions professional services must follow the procedures to ensure compliance with the Policy, and all contractors, vendors and consultants must comply with the procedures in the submission of their Bid/RFP/RFQ documents.

The Office of Procurement Services through the Small Business Development Department (SBD) administers the Anti-Discrimination Policy. The SBD will monitor compliance with the Policy; Provide ranges of participation; forms, applications and documents; establish and maintain a database of certified small, minority and woman-owned businesses (M/WBE); and be a resource for internal and external users to identify certified firms.

All School District employees engaged in procurement, whether for supplies, services, equipment, design & construction services or professional services should refer to this Operating Procedure for guidance in all matters relating to the Policy. All questions regarding the interpretation of these procedures should be addressed to the Office of Procurement Services, Small Business Development Department.

### **B. OBJECTIVES**

- To ensure nondiscrimination in the award and administration District contracts.
- To create a level playing field on which M/WBE firms can compete fairly for District contracts.
- To help remove barriers to the participation of M/WBE firms in District contracts.
- To assist in the development of firms that can compete successfully for District contracts.

**C. RESPONSIBLE PARTIES**

The Office of Procurement Services, Small Business Development, and Office of General Counsel.

**D. AUTHORITY**

Resolution of the School Reform Commission adopted March 12, 2003.

**E. EFFECTIVE DATE**

July 1, 2003.

**F. PROCEDURES FOR PURCHASING DEPARTMENT**

The Purchasing Department is responsible for the purchasing of supplies, services and equipment for the District and for ensuring that there is full and fair opportunity M/WBEs to bid on contracts through:

- Soliciting M/WBE firms listed in the database of available firms.
- Adding newly identified M/WBE firms to the database.
- Being available to provide assistance to M/WBE firms regarding doing business with the School District.
- Obtaining names of M/WBE firms from SBD to solicit for relevant bids and RFPs and RFQs.
- Participating in vendor conferences, meetings and other outreach activities geared toward increasing opportunities for M/WBE firms.
- Ensuring that bids RFPs and RFQs are not developed with language that is restrictive and/or limits competition
- Reviewing large procurement opportunities to determine if division into smaller segments would provide the opportunity for more competition particularly from M/WBE firms, and still be in the best interest of the School District.
- Ensuring that the following established procedures are consistently applied:

The Policy shall be included in all advertised bid solicitations emanating from the Office of Procurement Services.

Bids over \$25,000 advertised and governed by the formal bidding process shall include the Policy.

With the exception of sole-source procurements, bids over \$100,000 require a pre-bid conference to provide the opportunity for small, minority and woman-owned firms to meet establish relationships with prime contractors and/or to obtain sufficient information to bid as a prime contractors.

Bids over \$100,000 will include the Policy and the M/WBE Participation Plan form (the "Participation Form") attached hereto as Attachment #2. A bidder must submit a Participation Form which sets forth the ranges of participation that the bidder agrees to achieve if awarded a contract with the District. Failure to complete and submit the Participation Form may result in rejection of a bid.

- All Requests for Proposals through Procurement Services require pre-proposal conferences, the Policy and the required forms.
- The SBD department shall be included in all pre-bid/proposal meetings.
- Compliance with the Anti-Discrimination Policy shall be one of the evaluation criteria used in determining the successful proposer.
- The SBD department shall be represented on Bid and/or RFP evaluation committees.

#### **G. BUYER RESPONSIBILITY**

Buyers shall provide M/WBE firms with a list of all attendees at pre-bid conferences. The list shall include the firm names, contact persons, telephone number, fax number and email address.

Buyers shall ensure the Policy and all relevant forms are included in the appropriate bid documents.

Buyers shall submit bid documents to SBD for review and addition of M/WBE firms prior to solicitation by telephone or advertisement. This prior review by SBD will enable SBD to provide a list of appropriate M/WBE firms that should receive the bid documents.

#### **H. PROCEDURES FOR PROFESSIONAL SERVICES**

The School District contracts for professional services to be utilized by the various schools, departments and administrative units. The request to contract for professional services must be approved by resolution of the

SRC or submitted to the Limited Contracts Authority Committee (“LCA”). The Policy applies to all professional services contracts awarded by the District.

Limited Authority Contracts (LCA) – Contracts up to \$25,000:

Solicitations for award of professional service contracts at this level must include solicitations from consultants who are minorities and women. The SBD should be contacted for resources if the user is unable to identify M/WBE consultants to solicit from the SBD database or from personal knowledge. Failure to solicit M/WBE firms without adequate explanation may result in rejection by the LCA Committee.

Resolutions submitted to the SRC - Contracts over \$25,000:

Resolutions between \$25,000 and \$100,000 submitted to the SRC for approval shall follow the format detailed in the On-line Resolution procedure and complete to Participation Plan Form. As with solicitations for contracts under \$25,000, M/WBE firms must be included in the solicitation process. Solicitation for these contracts must include the Policy and Solicitation Forms.

Resolutions \$100,000 and above require inclusion of the Policy and Participation Form which indicates compliance with the established M/WBE range of participation. Failure to provide subcontracting opportunities for M/WBE firms may result in rejection of the resolution.

The contracting department must document on the On-Line Resolution document that SBD has approved of the Participation Plan. The documentation must identify the M/WBE subcontractor; the date SBD approved; and the name of the SBD member with whom they spoke.

## **I. PROCEDURES FOR DESIGN & CONSTRUCTION**

The Department of Design and Construction (D&C) is responsible for the building, renovation and maintenance of School District facilities. All contracts for these services, including those in the Capital Program are handled by this department. D&C is responsible for ensuring that M/WBE firms have a full and fair opportunity to bid on District contracts through:

- Soliciting M/WBE firms listed in the database of available firms.
- Adding newly identified M/WBE firms to the database.
- Being available to provide assistance to M/WBE firms regarding doing business with the School District.

- Obtaining names of M/WBE firms from the SBD to solicit for relevant Bids and Requests for Proposals.
- Participating in vendor conferences, meetings and other outreach activities geared toward increase opportunities for M/WBE firms.
- Ensuring that bids and RFPs are developed with language that is not restrictive and/or limits competition.
- Reviewing large procurement opportunities to determine if division into smaller segments would provide the opportunity for more competition particularly from M/WBE firms, and still be in the best interest of the School District.
- Ensuring that the following established procedures are consistently applied:

Bids \$25,000 to \$100,000 shall include the Policy and Participation Plan Forms. Bids shall be solicited from M/WBE firms to bid as prime contractors. The Participation Plan Form is required to be submitted with the bids. Bids may be rejected if the forms are not completed and submitted at the time of bid opening.

Bids over \$100,000 will include the Policy and Participation Plan Forms. Ranges for M/WBE participation will be included in each bid document. Failure to complete and submit a Participation Plan Form with the appropriate M/WBE range of participation may result in rejection of the bid.

Design & Construction staff will review bids for compliance before determining lowest responsible/responsive bidder.

The SBD will be included in all pre-bid/proposal meetings.

The SBD will be represented on RFP evaluation committees.

Compliance with the Anti-Discrimination Policy will be a significant factor in the evaluation process.

## **J. PROCEDURES FOR SMALL BUSINESS DEVELOPMENT**

The SBD is responsible for the development, implementation, monitoring and reporting on the Small Business Development program and compliance with the Anti-Discrimination Policy. Additional departmental responsibilities include, but are not limited to, the following tasks:

- Develop, recommend and implement policies and procedures for the Policy.

- Review all facets of the procurement process to ensure equal access by all segments of the community.
- Develop and maintain a database of available M/WBE firms and small businesses.
- Review all Participation Plan submissions to determine whether bidders/proposers are in compliance with the Policy and recommend appropriate action.
- Monitor all contracts to determine whether contractors achieve the ranges of participation set forth on Participation Forms completed by the contractors.
- Attend pre-bid/proposal conferences.
- Participate on proposal evaluation committees.
- Interact with assist agencies on M/WBE issues.
- Prepare monthly, quarterly and annual M/WBE reports.
- Assist internal and external customers in complying with the Policy.
- Coordinate with MBEC in establishing M/WBE participation ranges for compliance.
- Conduct effective outreach activities to increase the number of vendors contractors and consultants doing business with the School District.
- Review & evaluate the effectiveness of the Policy.
- Provide technical advice and guidance to M/WBE's in contracting and procurement opportunities with the District.
- Maintain statistics on utilization of M/WBE firms by School District department.
- Maintain the Symtrac Monitoring System.
- Develop appropriate forms, applications and documents.
- Coordinate activities of consultants hired to assist with Policy implementation.
- Investigate violations of the Policy and recommend remedial action.

- Conduct debriefing sessions with unsuccessful bidders to determine the reason the bidder was not successful.

## **K. BIDDER RESPONSIBILITIES**

The SRC adopted the Policy relating to the participation of M/WBEs in School District contracts on March 12, 2003. The purpose of the Policy is to provide equal opportunity for all businesses and to ensure that District funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The District is committed to fostering an environment, in which all businesses are free to participate in business opportunities, flourish without the impediments of discrimination and participate in all District contracts on an equitable basis. In accordance with the contracting requirements of the District, the Policy is applicable to bids for supplies, services & equipment, design & construction contracts, and contracts for professional services.

The District has contracted with the Minority Business Enterprise Council (MBEC) of the City of Philadelphia to establish contractual ranges of M/WBE participation for bids and RFPs. These ranges represent the percentage of M/WBE participation that should be attained in the available market absent discrimination in the solicitation and selection of these businesses. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of certified M/WBE's to perform various elements of the contract. These forms must be carefully reviewed and submitted with all bids and proposals. Failure to submit a Participation Form will result in rejection of the Bid/RFP (See Participation Form attached hereto as Attachment #2).

### **1. Participation Ranges**

Participation ranges included in bids and requests for proposals represent the percentage of participation by M/WBE firms that reflects the availability of these firms ready and able to provide the services required by the solicitation. These participation ranges serve exclusively as a guide in determining bidder responsibility.

Only firms certified by an approved certifying agency prior to bid opening will be credited toward the participation ranges. Approved certifications include state and city certification, State Departments of Transportation, the Small Business Administration, National and Local Minority Supplier Development Councils; National Association of Women Business Owners and other identified certifying agencies approved by the School District.

M/WBE subcontractors and manufacturers and suppliers of products and services directly related to the Bid/RFP are counted as direct

participation and will be credited toward the participation range at 100%.

In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories will only be credited toward one participation range as either an MBE or WBE. The firm will not be credited toward more than one category. Bidders will note with their submission which category, MBE or WBE is submitted for credit.

A minority or woman-owned business submitting as the prime bidder will receive credit toward the participation ranges for its own work or supply effort.

In listing amounts committed to on the Participation Plan Form, bidders should list both the dollar amount and percentage of total bid for each commitment made. In calculating the percentage amount, bidders may apply the standard mathematical rules in rounding off numbers. In the event of an inconsistency between the dollar and percentage amounts listed on the Participation Form, the amount, which results in the greater commitment, will be used.

**M/WBE subcontractors MUST sign the participation form submitted by the prime contractor.**

**All contractors must be trained and register in the Symtrac Vendor Registration System (VRS) and receive a vendor ID/Logon. Once registered, contractors and subcontractors must enter payment data in the monitoring system. This process will allow the SBD to track payments to prime and subcontractors**

## **2. Responsiveness**

Bidders must submit documentary evidence of M/WBE's who have been solicited and with whom commitments have been made.

Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made prior to bid opening shall be submitted, concurrently with the bid, on the enclosed document entitled "Participation Form". If the bidder has entered into a joint venture with an M/WBE partner, the bidder must submit a copy of the joint-venture agreement along with the Participation Plan Form.

Failure to submit the required information on M/WBE participation will result in rejection of the bid as non-responsive. Bidders should note that only commitments that have been made prior to bid opening and listed on the Participation Plan Form, signed by the subcontractor, will be credited toward the participation ranges. Since the District

must ensure that all bidders respond on equal terms, a bid which indicates that the bidder will make commitments after bid opening will be rejected as non-responsive.

Upon award, the completed forms and accompanying documents regarding solicitation and commitments with M/WBE's become part of the contract. A bidder should only make actual solicitations of M/WBE's whose work or materials are within the scope of the invitation to bid. Mass mailing of a general nature 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.

The bidder's listing of a commitment with an M/WBE as described on the Participation Plan Form constitutes a representation that the bidder has, prior to bid opening, made a binding commitment to contract with such firm, upon receipt of a contract award from the District.

Bidders failing to submit a bid within any one or more of the participation range(s) established for this invitation to bid shall submit concurrently with the bid submission, sufficient evidence which demonstrates to the District that the bidder has not engaged in discriminatory practices in the solicitation and commitment of contract participants. Failure to submit such evidence will result in the rejection of the bid as non-responsive.

Evidence submitted on this point should indicate: 1) whether M/WBE's were solicited for the type of work or materials to be contracted for and, if not, the reason(s) why no such solicitation was made; and (2) The reasons for not committing with an M/WBE that submitted a quote.

Where no quotations are received or commitments made within a range, the lack of quotations and/or commitments must be explained on the Participation Plan Form. Evidence submitted will be reviewed to ascertain whether the Policy has been adhered to in the solicitation or selection of contract participants.

Where bidder does not meet the ranges of participation either totally or in part, the School District, in its sole discretion shall determine whether or not the Policy has been violated.

Upon receipt of bids for this contract, the bidder's submittal will be subject to review by the SBD to determine whether the bidder has submitted a bid within each of the projected range(s) for M/WBE participation, If the ranges are met, the bidder will be rebuttably

presumed not to have adhered to the Policy requirements in its selections.

M/WBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts must be approved by the District.

### **3. Access to Information.**

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

Failure to cooperate with SBD in its review will result in a recommendation to the user department that the bidder be deemed not responsible and its bid rejected.

### **4. Records and Reports.**

The successful bidder shall maintain records relating to its M/WBE commitments (e.g. copies of subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least one year following acceptance of final payment. These records shall be made available for inspection by the SBD and/or other appropriate School District officials.

The successful bidder agrees to submit reports and other documentation to the School District as deemed necessary by the SBD unit to ascertain the successful bidder's fulfillment of its M/WBE commitments.

## **L. REMEDIES**

The successful bidder's compliance with the requirements the Policy is material to the contract. Any failure to comply with these requirements constitutes a substantial breach of the contract. It is further understood and agreed that in the event it is determined that the successful bidder has failed to comply with these requirements, the School District may, in addition to any other rights and remedies the they may have under the contract, any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:

Withhold payment(s), or any part thereof, until corrective action is taken.

Terminate the contract, in whole or in part.

Suspend the successful bidder from bidding on and/or participating in any future School District contracts for a specified period.

Recover as liquidated damages, one percent (1%) of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The “total dollar amount of the contract” shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the School District.)

#### *EXCEPTIONS TO POLICY*

In some cases it has been determined that the Policy will not apply. Exceptions to the policy include, but may be expanded at the discretion of the Office of Procurement Services after review & evaluation:

- Software Licenses
- City, State, Federal Contracts
- Educational Partners

#### **M. APPEAL PROCESS**

Appeal of any action taken under the Anti-Discrimination Policy shall be in writing to the Senior Vice President, Procurement Services, 440 North Broad Street, 3<sup>rd</sup> Floor, Portal A, Philadelphia, PA 19130.

## **XI. LIMITED CONTRACTS POLICIES AND PROCEDURES**

### **A. SCHOOL REFORM COMMISSION AUTHORIZATION**

#### **1. Policy**

The policy of the School District of Philadelphia is to allow a Limited Contract Review Committee (“Review Committee”) to approve professional service contracts and site rentals for \$25,000 and under (“limited contracts”) by majority vote, provided that (1) a regional superintendent or the Chief Executive Officer, the Chief of Staff, the Chief Academic Officer, the Chief Financial Officer, the Chief Information Officer, the Chief Operations Officer or the General Counsel (each, a “Chief Officer”) or a Chief Officer’s designee (*e.g.*, Senior Executive Vice President, Procurement Services) has approved the contract; and (2) the School Reform Commission has delegated authority to the Review Committee by resolution to approve such contracts in the fiscal year in which the contract is being reviewed.

The Review Committee will operate in accordance with the following procedures:

- a. All contracts approved by the Review Committee must be allowed by the budget of the contract preparer;
- b. Contracts will be reviewed and approved by the Review Committee using a standard rubric communicated to contract preparers;
- c. Requests to the committee to approve contracts should be submitted to the Review Committee on forms it prescribes, although the Review Committee has the discretion to make exceptions to this procedure.

#### **2. Procedures – Preparation of Resolution for SRC Consideration**

It is the responsibility of the representative of the Office of General Counsel (OGC) to prepare the resolution for SRC consideration. The representative must prepare the resolution so that the SRC considers it at a meeting before the fiscal year for which it is approving the resolution, and the resolution adopted by the SRC determines the rules by which the committee operates in a particular fiscal year. The resolution will provide that the Committee provide regular reports to the SRC listing the contracts it has approved, unless the SRC specifically asks not to receive such reports. A sample resolution is attached as Appendix J.

The Committee or other District officers may direct the OGC representative to change the text of the resolution submitted to the SRC based on the Committee's experience in prior years or changed circumstances.

The resolution will limit the total dollar amount of the limited contracts the Committee may authorize in a fiscal year unless the SRC decides to give the Committee unlimited discretion to review and authorize limited contracts.

## **B. CONTRACTS REVIEWED BY THE COMMITTEE**

### **1. Procedures – Contracts for a Single Activity**

A school or administrative office in the District cannot spend more than \$25,000 on one vendor through limited contracts unless the services provided by the vendor are completely unrelated.

As a general rule, if the SRC has already adopted a resolution authorizing a contract with a particular vendor, the Committee will not authorize a limited contract with a vendor unless the services are completely unrelated. However, the Committee may approve a limited contract for related services as long as the contractor is providing additional services and as long as the office requesting the limited contract is requesting the limited contract because of changed circumstances.

Example: A limited contract with a vendor to provide compensatory education for a student as a result of a settlement agreement is not related to a limited contract with the same vendor to provide professional development for counselors, and the Committee can approve both contracts.

Example: If an office enters into a \$25,000 limited contract with a consultant for the first phase of a project or the SRC adopted a resolution authorizing a contract with the consultant, the office cannot submit a request for a limited contract for the second phase of the project.

Example: If an office receives authorization through an SRC resolution to enter into a contract to provide Head Start services and additional students unexpectedly enroll in the program, the Committee may authorize a limited contract with the same vendor because the vendor is providing additional services and because circumstances changed, even though the services are related.

An office can submit multiple limited contracts with the same vendor in a given year for related services, as long as the total amount of the limited contracts submitted is \$25,000 or under. There is no limit on the total number of limited contracts an office may submit to the Committee in a given year.

**2. Procedures – Aggregate Amount of Limited Contracts with One Vendor**

The Committee may disapprove a contract with a vendor if the authorization of the contract would cause the aggregate amount of limited contracts between the District and the vendor to exceed \$75,000.

The Committee should determine near the beginning of the fiscal year if it expects a particular vendor to exceed \$75,000 in limited contracts, based on the District's experience with the vendor in past years. It is the responsibility of the representative of the CAO on the Committee, working with the District administrative office with responsibility for the service being performed (professional development, high schools), to prepare a blanket resolution to authorize a contract with the vendor that will cover all schools and offices that want to receive services from the vendor. It is the responsibility of the OGC representative on the Committee, working with the appropriate District department, to prepare the contract authorized by the resolution.

If at any point during the year, the aggregate amount of limited contracts with one vendor exceeds \$50,000, the Committee will talk to the vendor to find out whether the vendor is negotiating with other schools or regional offices so that the aggregate amount the District will spend on limited contracts with the vendor will exceed \$75,000. If the aggregate amount spent by the District on the vendor will exceed \$75,000, the Committee will (1) help prepare a blanket resolution and contract for the additional services as described in the paragraph above; or (2) as a last resort, approve limited contracts that total, in aggregate, more than \$75,000 with one vendor.

**3. Explanation**

By prohibiting offices from submitting limited contracts for over \$25,000 with the same vendor and by limiting the aggregate amount of contracts with one vendor to \$75,000, the Committee reduces the chances it is approving expenditures that would exceed the scope of the authority (in letter or in spirit) the SRC delegated to it.

**4. Procedures – School District Funds**

The Committee authorizes contracts made with School District funds. If a school is planning to spend Home + School Association funds or Student Activity Funds on contracted services, the Committee does not authorize the expenditure.

**C. SUBMISSION OF CONTRACTS**

**1. Policy – Submission of Contracts**

A school or office preparing limited contracts must follow the procedures for submitting limited contracts set forth by the Committee. Current versions of the limited contract forms are attached as Appendix G. All limited contracts and supporting documentation must be submitted before the work begins.

**2. Procedures – Submission of Contracts**

A school or office preparing limited contracts should follow the steps set forth in the Limited Contract checklist, attached as Appendix G. Some vendors will ask a school or an office to sign a form that it has prepared in addition to the District’s limited contract forms. If a vendor asks a school or an office to sign such a form, it should include an unsigned copy of the vendor’s form, along with the District’s limited contract form in the package it sends to the Committee. The Committee will designate a Committee member to receive limited contract packages, to keep data regarding limited contracts and to perform other administrative tasks relating to limited contracts (the “LC Manager”).

In certain circumstances, the Committee may review contracts authorized by a resolution. These resolutions may include (1) resolutions that authorize multiple contracts with specific vendors, some over \$25,000 and some under \$25,000; (2) a blanket resolution that authorizes an office to spend a specified amount on a program or a type of service (e.g., compensatory education); and (3) resolutions for an expenditure under \$25,000 prepared in error by a District employee unfamiliar with District procedures. If a resolution authorizes the contract, the Committee will approve the contract if the CFO’s representative determines that funds are available and the OGC representative determines that the contract is acceptable (e.g., adequate description of services).

Contract preparers submitting a limited contract already approved by a resolution should attach the resolution to the limited contract and do not need to include any information to justify why the expenditure is necessary.

3. **Procedures – Communicating Changes in Committee’s Procedures**

The Committee is responsible for communicating any changes in the Committee’s procedures to schools and offices submitting contracts. The Committee is responsible for doing so by conducting a training session during the principals’ annual training, by scheduling and conducting trainings for administrative offices on an as-needed basis and by posting the most current copy of the limited contract forms on the District’s web site.

**D. COMMITTEE’S OPERATING PROCEDURES**

1. **Policy – Committee Membership**

The membership of the Committee shall not exceed eight members, and the Committee shall have two co-chairs. Unless voted otherwise by the Committee members, the two Committee co-chairs shall be individuals selected by the Chief Academic Officer and the Chief Financial Officer to serve as their representatives on the Committee.

2. **Procedures - SBDO**

At least a day before the Committee’s meeting, the LC Manager will send all contracts to the director of the Small Business Development Office (SBDO) for review. The SBDO director can require the contract to be held if the contract preparer does not provide adequate information regarding the participation of minority-owned and women-owned businesses. If the contract preparer did not consider M/W/BEs and did not provide an adequate explanation of why M/W/BEs were not considered, the SBDO director may recommend that the contract be disapproved, although the Committee will make the ultimate decision to authorize or disapprove a contract.

The LC Manager will be responsible for keeping information on participation of M/W/BEs and will record whether a vendor is minority-owned, woman-owned, a non-profit organization or neither minority-owned, woman-owned or a non-profit. The Committee member will send this information to the Director of the SBDO every quarter.

### **3. Procedures – Committee Review of Contracts**

Committee members will have the opportunity to review limited contracts at least one day before the Committee meets.

The Committee will review contracts using the rubric attached as Appendix G. If a representative of an office recommends a certain decision based on an issue within their area of responsibility, the committee should pay some deference to that recommendation, but is free to decide an issue by majority vote. The Committee has the discretion to disapprove a request to enter into a limited contract if it determines that approval of the contract would not be in compliance with the resolution delegating authority to the Committee or if it reasonably believes that the SRC would not authorize the limited contract if the SRC was reviewing the limited contract request.

Limited contracts must be signed by a Chief Officer named in the SRC resolution, a regional superintendent, or someone designated to sign contracts by a Chief Officer or a regional superintendent, unless the resolution provides otherwise. Any designee signing contracts must be specifically designated by a Chief Officer.

Committee members can decide to authorize a contract, authorize a contract pending the receipt of specific information, hold a contract for more information or disapprove a contract. Examples of reasons to hold contracts include:

Inadequate description of the services the vendor will perform  
School or office submitting contract does not have funds for the contract in the budget designated on the limited contract  
Contract does not appear to be in compliance with the grant that is providing funds for the contract

If the Committee does not reach a consensus regarding a contract, each person on the Committee has one vote and the committee decides by majority vote.

One of the chairs of the Committee, or a Committee member if both chairs are absent, will sign the contract with a space noting the Committee's decision. The Committee will fax a copy of the signed contract to the school or office that prepared the contract to let them know of the Committee's decision.

#### **4. Procedures – Gathering Information**

The LC Manager will keep records of all the limited contracts that the committee receives. The records will include at a minimum, the vendor's name, the amount, the office that submitted the limited contract, the office that reviewed the contract, the date the contract was submitted. The LC Manager will be responsible for preparing the regular reports that the SRC receives as required by the resolution.

The LC Manager will keep a record of the remaining amount of contracts that the Committee can authorize in the fiscal year (based on the SRC resolution). The LC Manager will not take into account limited contracts authorized by a separate resolution when calculating the total dollar amount of contracts the Committee may authorize.

#### **5. Procedures – Financial Responsibility**

The Committee will ensure that vendors who are performing the work at different District locations are charging the same price if they are performing the same services at different locations. Whenever possible, the Committee will negotiate with vendors working at a number of different locations for a discount in price.

Through trainings, the Committee will encourage schools and offices to include a letter from the vendor that describes the services or another kind of statement of work, as well as a cost breakdown, especially if the contract is over \$10,000. If applicable, the Committee will require the contract to include specifications for the work vendor is performing.

#### **6. Procedures – Appeal of Disapproval of Contract**

Offices unhappy with the Committee's decision can prepare a resolution for the service in question for SRC consideration.

#### **7. Procedures – Graduation Contracts**

The Committee will review and approve the site licenses that the District enters into for venues for its high school graduations using the following procedure.

Schools should complete first page of the limited contract form and have the principal sign the form. Schools also complete any other document specific to their graduation, such as a floor plan, required by the vendor.

If the vendor does not use an additional form for its site license, the limited contract form constitutes the contract. The school sends the limited contract to the vendor, who signs it and sends it back to the school, which forwards it to the Committee. The Committee then authorizes the contract and returns the limited contract to the school and to the vendor.

If the vendor does use its own contract form, the school tells the vendor to attach the limited contract form to its contract. Once the vendor has forms from each of the schools using its site, it sends a copy of the contract to the CAO representative on the Committee. After the contract form is reviewed and approved by OGC, the Committee approves the contract. The CAO representative signs the contract as the reviewer, then coordinates the process of sending it to the vendor for signature and sending signed copies to the school and to the vendor.

**E. CONSEQUENCES FOR NON-COMPLIANCE WITH PROCEDURES**

**1. Policy**

The School District is under no obligation to pay a vendor who begins work before a limited contract is approved by the Committee.

**2. Procedures – Payment of Vendors**

The School District does not have any legal obligation to vendors who perform services without a limited contract that the Committee has approved. The Committee may decide to pay a contractor if it receives a contract submitted after services have begun, depending on an assessment of the facts and circumstances of the contract.

Some District officers and employees believe that the District is required to pay contractors if the vendor performs work, if it has a verbal authorization from a principal or other high-ranking official to proceed with the services or if it has a copy of the limited contract signed by the principal, even if the Committee has not formally approved a limited contract. This is not accurate.

Pennsylvania law is clear: the District is only liable for a contract if the SRC, or an individual or body designated by the SRC, approves the contract. The governing board of a school district – the SRC in the case of Philadelphia – must authorize all contracts over \$100. The SRC has delegated the authority to authorize such contracts to the Committee. It is responsibility of a vendor to ensure not only that it has a contract in place

before it begins performing work, but also that the School District has authorized the contract through the procedures established by state law or by resolution. A vendor who contracts with a school district must, at his peril, know the extent of the power of the school district's officers in making the contract. A vendor, therefore, does not have a right to expect payment for a contract under \$25,000 if the Committee has not approved the contract.

[*School District of Philadelphia v. Framlau Corporation*, 328 A.2d 866 (Pa. Cmwlth. 1974); Public School Code, §§5-508, 6-696(e).]

### **3. Procedures – Internal Consequences**

If a school or an office submits a request to contract to the Committee after services have begun or intentionally misrepresents information submitted to the Committee, one of the Committee chairs will send a letter of reprimand to the contract preparer, with a copy sent to the contract reviewer. The LC Manager will keep records with the number of letters of reprimand sent to each contract reviewer, as well as the percentage of contracts that they approved that required letters of reprimand. These records will be available to any officer of the District who asks for them, including the Chief of Staff and the Chief Executive Officer.

## **F. REVIEW COMMITTEE'S RUBRIC FOR REVIEWING CONTRACTS**

### **1. Limited Contract Requirements (Entire Committee)**

Have the required fields for the contract, including the background checks and a sufficient scope of services, been completed?

Is the contract a professional service contract within the Committee's authority?

Does the District have the capacity to perform the service internally or are other contractors currently working with the District providing the service?

Is the contractor entering into contracts (1) for a total amount of more than \$25,000 with the contract preparer's school/office; or (2) a total amount of more than \$75,000 with the District as a whole?

Is the amount being paid the contractor in line with the amount the District usually pays for this type of service?

## **2. Chief Academic Officer's Office (if an academic contract)**

Are the outcomes the contract preparer hopes to realize through the performance of the contracted services in alignment with District's educational goals or (if contract preparer is school-based) a school's School Improvement Plan?

Is the service to be provided consistent with state standards and the District's core curriculum and instructional models?

Does the preparer have a plan in place to evaluate the performance of the contractor?

## **3. Small Business Development Office (SBDO)**

Has the preparer either:

- Called a contractor from the SBDO's data base?
- Contracted with a minority or women-owned business (M/W/BE)?
- Given an adequate explanation for why he/she did not review the data base or contract with an M/W/BE?

## **4. Grants Office (if applicable)**

Does the proposed activity/service fit into the other uses of the grant funds?

Is the contract preparer measuring the success of the grant activity to determine whether the school or office is meeting grant objectives?

## **5. Office of General Counsel**

Does the contract expose the District to the risk of a lawsuit (for example, does it involve an activity that could endanger students)?

Has the contractor agreed to contract terms that protect the District's legal interests?

Is the person signing for the School District authorized to sign either by resolution or by a designation by the person authorized to sign by the resolution?

Are criminal background checks necessary for the services being performed (because the contractor has direct contact with students) and are the background checks current?

## **6. Chief Financial Office (CFO)'s Office**

Are there funds available for the services in the contract preparer's budget?

Is preparer using the correct ABC code/source of funds for the type of service being provided?

Has the contractor provided evidence of adequate insurance?

## **XII. RFP/BID DEBRIEFING**

Debriefings may be scheduled at the request of any bidder/proposer or initiated by SBD and may be scheduled during the protest appeal time. Bidder/Proposer may be debriefed by contacting the Small Business Development Office in writing, by phone or E-mail. Debriefings will be scheduled within 20 business days of the request. Each bidder/proposer will be debriefed only once. Debriefings are held at the Office of Procurement Services, 440 N. Broad Street, 3<sup>rd</sup> Floor, Portal A, Philadelphia, PA 19130. Debriefings should be candid, informative and a learning tool for both parties. Discussion must focus on the debriefing vendor's proposal only.

### **A. PURPOSE**

The purpose of debriefing is to:

1. Explain the rationale for the contract award decision.
2. Explain to unsuccessful bidder/proposer why they were not selected for award.
3. Instill confidence in bidder/proposer that they were treated fairly.
4. Assure bidder/proposer their proposals were evaluated in accordance with the solicitation and applicable laws and regulations.
5. Identify weaknesses in bidder/proposers' proposals so they can prepare better proposals in the future. Reduce misunderstandings and protests can be done orally, in writing, or by other means.

### **A Debriefing is not**

1. A point-by-point comparison of one proposer's proposal to another.
2. A debate over the award decision or evaluation results.
3. An opportunity for review of other proposals (this is a Public Record's request and will be allowed separate from the debriefing).

### **B. ESSENTIALS**

Debriefings are provided to unsuccessful bidder/proposers. At a

minimum, the debriefing must include:

1. Evaluation of significant weaknesses or deficiencies.
2. The overall evaluated cost or price and technical rating, if any.
3. The overall ranking of bidder/proposers, if a ranking was developed
4. A summary of the rationale for award.
5. For acquisition of commercial end items, the make and model of the item to be delivered.
6. Reasonable responses to relevant questions about procedures, applicable regulations.

**C. DISCLOSURE**

The debriefing should not disclose:

1. Trade secrets.
2. Privileged or confidential manufacturing processes and techniques.
3. Commercial or financial information that is confidential.
4. Names of individuals providing past performance information.
5. Detailed cost information about other proposals.

**D. DEBRIEFING SUMMARIZATION**

A summary is required for the contract file and should include questions and answers provided in the debriefing.

**E. SCHEDULING OF DEBRIEFINGS**

Debriefings may be scheduled by the proposers after the "Intent to Award" and "Notice of Regret" letters have been issued. Please forward requests for debriefing to the attention of the Senior Executive Vice President, Procurement Services.