

SCHOOL DISTRICT OF PHILADELPHIA

Anti-Discrimination Policy Procedures Manual

**Office of Procurement Services
Small Business Development**

September 3, 2003

**SCHOOL DISTRICT OF PHILADELPHIA
ANTI-DISCRIMINATION POLICY**

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SCHOOL DISTRICT OF PHILADELPHIA ANTI-DISCRIMINATION POLICY

1.0 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. (See Attachment #1)

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, and requests for proposals 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 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; establish ranges of participation; provide forms, applications and documents; establish and maintain a database of certified minority and woman-owned businesses (M/WBE's); 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.

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1.1 OBJECTIVE

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

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1.0 RESPONSIBLE PARTIES

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

1.2 AUTHORITY

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

1.3 EFFECTIVE DATE

July 1, 2003.

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2.0 DEFINITIONS

2.1 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

2.2 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 Women’s Business Enterprise (WBE).

2.3 Bid.

“Bid” means a response to: (1) an invitation to bid; or (2) a Request for Proposals

2.4 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.

2.5 Certified Business Enterprise.

“Certified business enterprise,” means a Minority or Woman-Owned Business enterprise that has been certified by certifying agency approved by the School District.

2.6 Contractor.

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

2.7 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

2.8 Direct Participation.

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

2.9 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.

2.10 Indirect Participation.

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“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.

2.11 Joint Venture.

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

2.12 Local Business.

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

2.13 Meaningful & 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.

2.14 “Minority Business Enterprise.

“Minority 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.

2.15 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.

2.16 Purchasing.

“Purchasing,” means the buying, renting, leasing, or otherwise obtaining or acquiring any supplies, materials, equipment, or services.

2.17 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.

2.18 Small Business.

A “Small Business” for purposes of the Policy, is a businesses owned or operated by a certified Minority or Woman owned firm or is identified by the Small Business

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Administration as a Small Business and is registered with the School District of Philadelphia Small Business Department.

2.19 Subcontractor.

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

2.20 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 or materials; or (ii) otherwise warehouses and ships the supplies.

2.21 Women’s Business Enterprise.

“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.

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3.0 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 for Minority and Woman-Owned businesses to bid on contracts through:

- 3.1 Soliciting M/WBE firms listed in the database of available firms
- 3.2 Adding newly identified M/WBE firms to the database
- 3.3 Being available to provide assistance to M/WBE firms regarding doing business with the School District
- 3.4 Obtaining names of M/WBE firms from the Small Business Development department to solicit for relevant Bids and Requests for Proposals
- 3.5 Participating in vendor conferences, meetings and other outreach activities geared to increase opportunities for M/WBE firms
- 3.6 Ensuring that bids and Requests for Proposals are not developed with language that is restrictive and/or limits competition
- 3.7 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
- 3.8 Ensuring that the following established procedures are consistently applied:
 - 3.8.1 The Policy shall be included in all advertised bid solicitations emanating from the Office of Procurement Services.
 - 3.8.2 For solicitations under \$4,000 vendors identified as Small Businesses shall be solicited to bid.
 - 3.8.3 Bids from \$4,000 to \$24,999 require quotes from at least three vendors, one of which is an M/WBE.
 - 3.8.4 Bids over \$25,000 advertised and governed by the formal bidding process shall include the Policy.
 - 3.8.5 With the exception of re-bids and sole-source procurements,

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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.

- 3.8.6 Bids over \$100,000 will include the Policy and the “Minority and Woman-Owned Business Enterprise (M/WBE) Participation Plan form” (the “Participation Form”) See Attachment #3) 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.
- 3.8.7 All Requests for Proposals through Procurement Services require pre-proposal conferences, Policy and the required forms.
- 3.8.8 All requests for Proposals over \$100,000 shall include the Policy and the required forms.
- 3.8.9 The SBD department shall be included in all pre-bid/proposal meetings.
- 3.8.10 Compliance with the Anti-Discrimination Policy shall be one of the evaluation criteria used in determining the successful proposer.
- 3.8.11 The Small Business Development department shall be represented on evaluation committees

3.9 Buyer Responsibility

- 3.9.1 Buyers shall provide M/WBE firms with a list of all attendees at pre-bid conferences. The list shall include the firm names and contact persons, telephone number, fax numbers and email address.
- 3.9.2 Buyers shall collect the M/WBE Participation Forms supplied by bidders and submit to the SBD for review prior to recommending a vendor for award.
- 3.9.3 Buyers shall notify Small Business Development of the selected vendor.
- 3.9.4 Buyers shall ensure that the Policy and all relevant forms are included in the appropriate bid documents.
- 3.9.5 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.

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4.0 PROCEDURES FOR PROFESSIONAL SERVICES CONTRACTS

The School District contracts for professional services to be utilized by the various schools, departments and administrative units. The request to contract for these services must be approved by resolution of the School Reform Commission (“SRC”) or submitted to the Limited Contracts Authority Committee (“LCA”). The Policy applies to all professional services contracts.

4.1 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. (See Attachment #2)

4.2 Resolutions submitted to the SRC for approval

4.2.1 Resolutions between \$25,000 and \$100,000 submitted to the SRC for approval shall include a letter proposal, the scope of services to be performed, the qualifications of the proposer, and the cost for the services to be provided. 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. (See Attachment #4). The response from the proposer must be submitted to the Small Business Develop department for review for compliance with the policy before submission to the SRC. Failure to comply with the Policy may result in rejection of the resolution

4.2.2 Resolutions \$100,000 and above require inclusion of the Policy and the Participation Form. Failure to provide subcontracting opportunities for M/WBE firms to provide direct or indirect services may result in rejection of the resolution.

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5.0 DESIGN & CONSTRUCTION PROCEDURES

The Department of Design & Construction 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 in this department. The Department is responsible for ensuring that M/WBE firms have a full and fair opportunity to bid on District contracts through:

- 5.1 Soliciting M/WBE firms listed in the database of available firms.
- 5.2 Adding newly identified M/WBE firms to the database.
- 5.3 Being available to provide assistance to M/WBE firms regarding doing business with the School District.
- 5.4 Obtaining names of M/WBE firms from the SBD to solicit for relevant Bids and Requests for Proposals.
- 5.5 Participating in vendor conferences, meetings and other outreach activities geared to increase opportunities for M/WBE firms.
- 5.6 Ensuring that bids and Requests for Proposals are developed with language that is not restrictive and/or limits competition.
- 5.7 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.
- 5.8 Ensuring that the following established procedures are consistently applied:
 - 5.8.1 Bids under \$10,000 – Design & Construction Staff will solicit bids from Small Businesses and M/WBE firms provided from the SBD Database of available firms. (Design & Construction services obtained through the Limited Contract Authority process must follow the LCA procedures. (See Attachment #2)
 - 5.8.2 Bids \$10,000 to \$25,000 are required to be advertised. These bids shall be solicited from M/WBE firms utilizing the assistance of the SBD database of available small and M/WBE firms. (Services obtained through the Limited Contract Authority Process (LCA) must follow the LCA procedures. (See Attachment #2)

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- 5.8.3 Bids \$25,000 to \$100,000 shall include the Policy and Participation Forms. Bids shall be solicited from M/WBE firms to bid as prime contractors. The Participation 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.
- 5.8.4 Bids over \$100,000 will include Policy and Participation Forms. Ranges for participation will be included in each bid document. Failure to complete and submit a Participation Form with the appropriate range of participation may result in rejection of the bid.
- 5.8.5 Design & Construction staff will submit the M/WBE participation forms to SBD for review for compliance before determining lowest responsible/responsive bidder.
- 5.8.6 The SBD will be included in all pre-bid/proposal meetings as a part of the presentation panel.
- 5.8.7 The SBD will be represented on RFP evaluation committees
- 5.8.8 Compliance with the Anti-Discrimination Policy will be a significant factor in the evaluation process.

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6.0 SMALL BUSINESS DEVELOPMENT PROCEDURES

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

- 6.1 Develop, recommend and implement policies and procedures for the Policy.
- 6.2 Review all facets of the procurement process to ensure equal access by all segments of the community.
- 6.3 Develop and maintain a database of available small, M/WBE firms and small businesses.
- 6.4 Review all participation submissions and determine whether bidders/proposers are in compliance with the policy and recommend appropriate action.
- 6.5 Monitor all contracts to determine whether contractors achieve the ranges of participation set forth on Participation Forms completed by the contractors.
- 6.6 Attend pre-bid/proposal conferences.
- 6.7 Participate on proposal evaluation committees.
- 6.8 Interact with assist agencies on M/WBE issues.
- 6.9 Prepare quarterly reports.
- 6.10 Assist internal and external customers in complying with the Policy.
- 6.11 Coordinate with MBEC in establishing ranges for compliance.
- 6.12 Conduct effective outreach activities to increase the number of vendors contractors and consultants doing business with the School District.
- 6.13 Review & evaluate the effectiveness of the Policy.
- 6.14 Provide technical advice and guidance to M/WBE's in contracting and procurement opportunities with the District.
- 6.15 Maintain statistics on utilization of M/WBE firms by department.
- 6.16 Develop appropriate forms, applications and documents.

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- 6.17 Coordinate activities of consultants hired to assist with Policy implementation.
- 6.18 Investigate violations of the Policy and recommend remedial action.
- 6.19 Prepare and publish Annual Participation Reports.

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7.0 BIDDER RESPONSIBILITIES

The School Reform Commission adopted the Policy relating to the participation of Minority and Woman-Owned Businesses in 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 annual ranges of participation for bids and Requests for Proposals. 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 Attachment #3)

7.1 PARTICIPATION RANGES

- 7.1.1 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.
- 7.1.2 Only firms certified by an approved certifying agency prior to bid opening will be credited toward the participation ranges. Approved agencies include state and city certification offices, 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.
- 7.1.3 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%.

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- 7.1.4 Bidders who utilize indirect contracting with M/WBE firms to satisfy the participation range may do so, however indirect participation may not exceed 25% of the requirement.
- 7.1.5 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.
- 7.1.5 A M/WBE submitting as the prime bidder will receive credit toward the participation ranges for its own work or supply effort.
- 7.1.6 In listing amounts committed to on the Participation 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.

7.2 RESPONSIVENESS

- 7.2.1 Bidders must submit documentary evidence of M/WBE's who have been solicited and with whom commitments have been made.
- 7.2.2 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 a M/WBE partner, the bidder must submit a copy of the joint-venture agreement along with the Participation Form.
- 7.2.3 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 Form 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.
- 7.2.4 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

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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.

7.2.5 The bidder's listing of a commitment with a M/WBE as described on the Participation 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.

7.2.6 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 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: 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; (2) The reasons for not committing with a M/WBE that submitted a quote.

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

7.2.8 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. .

7.2.9 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.

7.2.10 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

7.3 ACCESS TO INFORMATION

7.3.1 The Small Business Development 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,

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manufacturer of contract participant that may be required in order to ascertain bidder responsibility.

- 7.3.2 Failure to cooperate with Small Business Development in its review will result in a recommendation to the User Department that the bidder be deemed not responsible and its bid rejected.

7.4 RECORDS AND REPORTS

- 7.4.1 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.
- 7.4.2 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.

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8.0 REMEDIES

8.1 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:

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

8.1.2 Terminate the contract, in whole or in part.

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

8.1.4 Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment short fall. (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.)

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9.0 APPEAL PROCESS

- 9.1 Appeal of any action taken under the Anti-Discrimination Policy shall be in writing to the Chief Procurement Officer, John F. Kennedy Center, 734 Schuylkill Avenue Room #110, Philadelphia, PA 19146-2397

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10.0 ATTACHMENTS

- 10.1 Anti-Discrimination Policy
- 10.2 Limited Contract Committee Procedures
- 10.3 Participation Form

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**SECTION 10
ATTACHMENTS**

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