

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

**SECTION 1. THE POLICY**

It is the policy of the School District of Philadelphia (the "District") acting through and by the School Reform Commission (the "SRC") to ensure equal opportunity in all contracts let by the District (the "Contracts"). In light of this policy, the District has adopted this Anti-discrimination Policy (the "Policy") which is applicable to all Contracts, including but not limited to, Contracts for the design, development, construction, operation and maintenance of school buildings and other buildings and structures owned, leased or used by the District or its contractors, assignees, lessees and licensees (the "Facilities"); Contracts for professional services and Contracts for the purchase of goods, services, supplies and equipment for the District and the Facilities. The objective of the Policy is the promotion of prime contract and subcontract opportunities for minority and woman-owned business enterprises ("M/W/BEs") that are approved by the District or they are certified by the Minority Business Enterprise Council of the City of Philadelphia, Southeastern Pennsylvania Transportation Authority or any other certifying agency designated by the District in its discretion.

The fundamental requirement of the Policy is that all contractors, vendors and consultants, who contract with the District (the "Contractors"), satisfy the District that they will: (i) not discriminate against any person in regard to race, color, religion, age, national origin, sex, ancestry, handicap or disability; and (ii) provide a full and fair opportunity for the participation of M/W/BEs in Contracts. Contractors must demonstrate that the participation of M/W/BEs is "meaningful and substantial" in all phases of a Contract under criteria adopted by the District. "Meaningful and substantial" shall be interpreted by the District as meaning the range of participation that reflects the availability of bona fide M/W/BEs in the Philadelphia Metropolitan Statistical Area. Participation shall be measured in terms of the actual dollars received by M/W/BEs.

"Minority" as used in this Policy, means Black American (all persons having origins in any of the Black African racial groups); Hispanic/Latino American (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin); Asian Pacific Island American (all persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and Native American (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

**SECTION 2. PROCEDURES FOR IMPLEMENTATION**

Articulation of the Policy, Staffing and Reporting

The Office of General Counsel and Office of Small Business Development will develop language to be included in bid solicitations and requests for proposals which clearly sets forth the objective of the Policy (the "Solicitation Language"). District employees shall include the Solicitation Language in all bids, public solicitations and requests for proposals. The Policy shall be articulated to the public in general, and to each Contractor, assignee, lessee or licensee doing business with the District.

The District may employ additional staff or contract with other public or private entities to assist in the implementation of the Policy. District staff shall provide the SRC with periodic reports on the levels M/W/BE participation in all contracting activities.

### Promotion of M/W/BEs

The District recognizes the importance of having meaningful and substantial M/W/BE participation in all Contracts. To that end, the District will take steps to ensure that M/W/BEs are afforded a fair and equal opportunity to participate. Those steps may include but are not limited to: (i) making public contracting opportunities; (ii) advertising in newspapers and periodicals published by community-based organizations and M/W/BEs; and (iii) designing bid packages in such a way as to promote rather than discourage M/W/BE participation.

### Contracting Requirements

Prior to the dissemination of any bid, request for proposals or public solicitation (the "Solicitation"), the District shall determine the projected range of M/W/BE participation in the area to be bid (the "Participation Range"), and may include this information, along with the names and addresses of bona fide M/W/BEs that are available for contracting or joint-venture opportunities with the Solicitation. Each bidder or respondent shall be required to submit: (i) a plan with its bid or proposal which meets the Participation Range set forth in the Solicitation and which lists the names, addresses, dollar amounts and scope of work to be performed by M/W/BEs (the "Participation Plan"); or (ii) a brief narrative explaining its reasons for not submitting a Plan which meets the Participation Range set forth in the Solicitation. Submission of the Participation Plan is an element of responsiveness and failure to submit a completed Participation Plan or a narrative explaining the reasons that the Participation Ranges could not be met may result in the rejection of a bid or proposal.

If the Participation Range in a bid or proposal meets or exceeds the level determined by the District to be meaningful and substantial, there shall be a presumption of compliance with the Policy. If, however, the proposed Participation Range falls below the level determined by the District to be meaningful and substantial, the bidder or respondent must prove to the satisfaction of the District that it did not discriminate in the solicitation of potential subcontractors and/or joint venture partners.

### Sanctions

The Participation Plan shall be a part of each Contract between the District and a Contractor and shall be enforceable as any other contractual term or condition. Sanctions for breach of a Participation Plan may include suspension, cancellation of the Contract and/or disbarment from future contracting opportunities with the District.

**SCHOOL DISTRICT OF PHILADELPHIA  
OFFICE OF PROCUREMENT SERVICES  
MINORITY/WOMAN-OWNED BUSINESS ENTERPRISE (MWBE) PARTICIPATION PLAN FORM**

**I. Information in this section refers to the Prime Contractor/Vendor.**

Company Name \_\_\_\_\_ Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Owner: \_\_\_African-American, \_\_\_Hispanic, \_\_\_Asian, \_\_\_Native American \_\_\_Woman, \_\_\_Non-Profit \_\_\_Caucasian,  
Federal Tax ID \_\_\_\_\_ Certifying Agency: \_\_\_\_\_ Certification No.: \_\_\_\_\_  
Bid Number or Subject of Resolution: \_\_\_\_\_

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**II. Information in this section refers to MWBE firms to be used in the performance of this contract.**

Company Name: \_\_\_\_\_ Owner: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Owner: \_\_\_African-American, \_\_\_Hispanic, \_\_\_Asian, \_\_\_Native American \_\_\_Woman, \_\_\_Non-Profit \_\_\_Caucasian,  
Federal Tax ID \_\_\_\_\_ Certifying Agency: \_\_\_\_\_ Certification No.: \_\_\_\_\_  
Description of Work: \_\_\_\_\_  
Dollar Value \$ \_\_\_\_\_ Percentage of Total Contract \_\_\_\_\_  
Vendor Signature \_\_\_\_\_

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Company Name: \_\_\_\_\_ Owner: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Owner: \_\_\_African-American, \_\_\_Hispanic, \_\_\_Asian, \_\_\_Native American \_\_\_Woman, \_\_\_Non-Profit \_\_\_Caucasian  
Federal Tax ID \_\_\_\_\_ Certifying Agency: \_\_\_\_\_ Certification No.: \_\_\_\_\_  
Description of Work: \_\_\_\_\_  
Dollar Value \$ \_\_\_\_\_ Percentage of Total Contract \_\_\_\_\_  
Vendor Signature \_\_\_\_\_



**School District of Philadelphia  
Anti-Discrimination Policy**

**INSTRUCTIONS TO BIDDERS**  
(TO BE INCLUDED IN BID DOCUMENTS AND REQUESTS FOR PROPOSALS)

**SEPTEMBER 2003**

## **INSTRUCTIONS TO BIDDERS/PROPOSERS**

### **BIDDER RESPONSIBILITIES**

#### **THE POLICY**

The School Reform Commission ("SRC") adopted the Anti-Discrimination Policy ("Policy") relating to the participation of Minority and Woman-Owned Businesses in School District ("District") contracts. The purpose of this policy is to provide equal opportunity for all businesses and to ensure that School 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, Policy is applicable to bids for supplies, services & equipment, design & construction contracts, and contracts for professional services.

(See Attachment #1)

#### **PARTICIPATION RANGES**

The School District has contracted with the Minority Business Enterprise Council (MBEC) of the City of Philadelphia to establish ranges of participation for bids and Requests for Proposals, which serve as a guide in determining each bidder's responsibility. 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. M/WBE Participation Forms are included in all applicable bid packages. These forms must be carefully reviewed and completed as the submission of a Participation Form with bids and responses to Requests for Proposals is an element of responsiveness and failure to submit a Participation Form will result in rejection of the Bid/RFP. (See Attachment #2)

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.

#### **CERTIFICATION REQUIREMENTS**

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.

#### **PARTICIPATION CREDIT**

M/WBE subcontractors and manufacturers and suppliers of products are credited toward the participation range at 100%.

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.

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 M/WBE 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 Solicitation and Commitment 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.

## **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 there from) 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.

*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 School 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 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 School District.

## **BID REVIEW**

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 met the requirements Anti-Discrimination Policy 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 School District.

## **ACCESS TO INFORMATION**

The Small Business Development Unit 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 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

## **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.

## **REMEDIES**

The successful bidder's compliance with the requirements the Anti-Discrimination 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 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.)

## **APPEAL PROCESS**

Appeal of any action taken under the Anti-Discrimination Policy shall be in writing to the Sr. Vice President of Procurement Services, School District of Philadelphia Education Center, 440 N Broad Street, 3<sup>rd</sup> Floor, Philadelphia, PA 19130.



**THE SCHOOL DISTRICT OF PHILADELPHIA  
OFFICE OF PROCUREMENT SERVICES  
VENDOR CODE OF ETHICS**

The School District of Philadelphia ("SDP"), through its Office of Procurement Services ("OPS"), is committed to a procurement process that fosters fair and open competition, is conducted under the highest ethical standards and enjoys the complete confidence of the public. To achieve these purposes, OPS requires each vendor who seeks to do business with the SDP to subscribe to this Vendor Code of Ethics.

- A Vendor's bid or proposal will be competitive, consistent and appropriate to the bid documents.
- A Vendor will not discuss or consult with other Vendors intending to bid on the same contract or similar SDP contract for the purpose of limiting competition.
- A Vendor will not disclose the terms of its bid or proposal, directly or indirectly, to any other competing Vendor prior to the closing date for bids or proposals.
- A Vendor will not make any attempt to induce any individual or entity to submit or not to submit a bid or proposal.
- A Vendor will completely perform any contract awarded to it at the contracted price pursuant to the terms set forth in the contract.
- A Vendor will submit timely, accurate and appropriate invoices for goods and/or services actually performed under the contract.
- A Vendor will properly, accurately and fairly record all financial transactions with the SDP in its books, journals, ledgers and/or other appropriate records.
- A Vendor will not offer or give any gift, item or service of value, directly or indirectly, to an SDP employee, School Reform Commission (SRC) member, SDP consultant or contractor employed in connection with the subject matter of the bid or proposal or to any member of their immediate families. This restriction also applies to any family member, employee, SRC member, SDP consultant and/or contractor employed in connection with SDP.
- A Vendor will not, without the prior written consent of the SDP, initiate, negotiate or render an offer of employment to any SDP employee who is directly concerned with, or personally participating on behalf of the SDP with respect to any procurement or other matter involving the Vendor.
- A Vendor will not cause, influence or attempt to cause or influence any SDP employee or SRC member: (i) in any member which might tend to impair his/her objectivity or independence of judgment; or (ii) to use or attempt to use his/her official position to secure any unwarranted privileges or advantage for that Vendor or for any other person.
- A Vendor will comply with the SDP's Anti-Discrimination Policy regarding inclusion of Small Women/Minority Owned Businesses in District contracts.