

## **REGULATIONS RELATING TO LOCAL BIDDING PREFERENCES FOR PROCUREMENT CONTRACTS, Section 17-109 of the PHILADELPHIA CODE**

The Procurement Department hereby promulgates the following regulation:

### **Section 1. Definitions**

For the purposes of this regulation, the following definitions apply:

- a. **Business Entity.** A “Business Entity” means any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, or unincorporated association, including any parent company, subsidiary, exclusive distributor or company affiliated with the above entities, engaged in a business or commercial enterprise.
- b. **City.** “City” means the City of Philadelphia, Pennsylvania, including its agencies, departments, boards and commissions.
- c. **City Contract(s).** “City Contract(s)” means any contract awarded by the Procurement Department pursuant to formal sealed bidding in accordance with Section 8-200 (1) of The Philadelphia Home Rule Charter.
- d. **Debar; Debarment.** “Debar” or “Debarment” means action taken by the Procurement Commissioner, in accordance with the City’s Policy and Procedure for the Debarment and Suspension of Vendors and Contractors, to prohibit a Contractor from entering into City Contracts, seeking to enter into City Contracts, performing as a Subcontractor on City Contracts and/or imposing other sanctions.
- e. **Local Business Entity.** A “Local Business Entity” or “LBE” means any business entity certified as such by the Procurement Commissioner pursuant to these Regulations.
- f. **Procurement Commissioner.** “Procurement Commissioner” means the head of the City of Philadelphia Procurement Department or his/her designee(s).
- g. **Procurement Department.** “Procurement Department” means the Procurement Department of the City of Philadelphia.

### **Section 2. Application**

A Business Entity shall complete the LBE Certification Application, which includes:

- a. A written certification that the Business Entity is not delinquent in the payment of any City or School District of Philadelphia taxes, charges, fees, rents or claims, or that the Business Entity has entered into agreement to pay the delinquency and is abiding by those terms; and
- b. A written waiver of the provisions of Section 19-506(2) of the Philadelphia Code to expressly authorize the Revenue Department to share with the Procurement

Department the Business Entity's Annual Reconciliation of Employer Wage Tax and Business Income & Receipts Tax return, including any information therein that might be otherwise confidential.

### **Section 3. Certification**

A Business Entity is eligible for certification as a LBE if the Procurement Commissioner determines that:

- a. The Business Entity filed a Business Income & Receipts Tax return with the City during the preceding twelve (12) months. This return must establish that the Business Entity conducted business within the City within the calendar year preceding the filing of the return; and
- b. During the preceding eighteen (18) months, the Business Entity continuously maintained a valid Commercial Activity License<sup>1</sup>, and all other licenses and permits necessary to conduct business in the City; and
- c. During the preceding eighteen (18) months, the Business Entity continuously occupied, staffed and conducted business in an office within the City, evidenced by a lease and/or ownership of commercial space whereby the customary business operations of the Business Entity are conducted; and
- d. The Business Entity satisfies one of the following two requirements:
  - i. The Business Entity's principal place of business is located in the City; or
  - ii. During the preceding eighteen (18) months, the business Entity continuously satisfied at least two of the following three requirements:
    1. More than sixty percent (60%) of the Business Entity's full-time employees are reported as Philadelphia Residents on the City of Philadelphia Annual Reconciliation of Employer Wage Tax; or
    2. More than half of the Business Entity's full-time employees work in the City at least sixty percent (60%) of the time; or
    3. More than three quarters of the Business Entity's gross receipts are reported on the Entity's Business Income & Receipts Tax return as Philadelphia receipts.

### **Section 4. Employment Data and Inspections**

If a Business Entity's principal place of business is not located in the city, then the Procurement Commissioner, prior to certifying the Business Entity as a Local Business

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<sup>1</sup> A commercial activity license (CAL) is not automatically provided to a Business Entity when it files a Business Income & Receipts Tax return. Separate application must be made to the Department of Licenses and Inspections.

Entity, shall have the authority to:

- a. Require the Business Entity to provide employment and other data necessary to establish that the Business Entity has met the requirements for certification; and
- b. In the absence of documentation demonstrating the existence of an office within the City of Philadelphia, conduct a site inspection of the Business Entity's offices within the City.

**Section 5. Annual Recertification**

Certification as an LBE by the Procurement Commissioner shall be valid for five (5) years. To maintain certification during the five (5) year term, the LBE must:

- a. Provide an updated certificate and affidavit to the Commissioner every year, by the anniversary of the certification, affirming that the LBE is not tax delinquent and continues to comply with the certification requirements; and
- b. Promptly notify the Procurement Commissioner if there is a material change to the ownership or control of the Local Business Entity, or if there is a change in address or phone number, or if there is any other change in the operations of the Local Business Entity that would cause the Local Business Entity no longer to comply with the certification requirements.

Failure to provide the affidavit will result in suspension of LBE status and the LBE bid preference shall not apply.

**Section 6. Bidder's Submission**

Bidder, in order to be eligible to receive the bid preference, must submit with its bid the following information:

- a. Current LBE certification number from the Procurement Commissioner;
- b. If requested by Procurement, most recent annual affidavit provided pursuant to Section 5 above; and
- c. A certification that, throughout the entirety of the contract:
  - i. The LBE or a subcontractor will perform, on the site and with its own workforce, the majority of any work (which shall mean work with a value of at least 51% of the original total contract price) on the subject contract within the geographic limits of the city; and
  - ii. The LBE or a subcontractor will maintain within the City a majority of the inventory or equipment that will be used on the contract or the amount of inventory that is customary for that industry; and
  - iii. The local business entity will satisfy Sections 3(a), 3(b), 3(c), and at least one of the requirements identified in 3(d) above.

- d. If the Bidder relies upon a subcontractor to meet the requirements in subsections 6(c)(i) or 6(c)(ii), the Bidder must submit the following:
  - i. A current certification from the Procurement Commissioner that the subcontractor itself is a Local Business Entity; and
  - ii. Subcontractor's most recent annual affidavit provided pursuant to Section 5(a) above.

The Procurement Commissioner reserves the right to request any additional or clarifying information at any time prior to award of the contract, and during the performance of the contract.

## **Section 7. Application of Bid Preference and Waiver of Preference**

- a. Unless the Procurement Commissioner determines not to grant a preference for the reasons stated below in subsection (c), an LBE, whose bid is otherwise responsive and responsible and who has submitted the information required by Section 5 and 6 above, shall be granted one of the following bid preferences on competitive bid(s) awards that are over \$32,000 and awarded as a whole or by section:
  - i. For contracts certified by the Director of Finance or his designee as funded in whole or in part with moneys received pursuant to the American Recovery and Reinvestment Act, Pub. L. 111-5 (Feb. 17, 2009): ten percent (10%);
  - ii. For all bids of One Million Dollars (\$1,000,000.00) or less: ten percent (10%);
  - iii. For contracts over One Million Dollars (\$1,000,000.00): five percent (5%).
- b. In applying the 10% preference, the bid price of the LBE will be multiplied by .9; in applying the 5% preference, the bid price of the LBE will be multiplied by .95. The bid price will then be rounded to the second decimal place. The adjusted bid price of the LBE will then be used in determining the lowest responsive and responsible bid.
- c. If the Procurement Commissioner certifies that application of the bid preference would result in the loss of federal, state or similar funds, the Commissioner may waive the grant of preference. In such case, the Procurement Commissioner shall transmit a copy of such determination to the Mayor, the President of City Council and the Chief Clerk of City Council no later than one week following the contract award.

## **Section 8. Compliance**

- a. The Procurement Commissioner or its designee may inspect and monitor all premises,

business practices and operations of any LBE as may be necessary or appropriate to ensure compliance.

- b. The certification made by an LBE in its bid pursuant to Section 6 above shall be deemed incorporated into any contract resulting from the bid for which a preference is granted. If the Procurement Commissioner determines that the LBE fails to comply with its certification at any time during the term of its contract, the LBE certification will be revoked and the LBE shall be deemed in substantial breach of such contract, shall be required to pay liquidated damages of 10% of the awarded contract amount, and may be debarred by the Procurement Commissioner in accordance with the Procurement Department Debarment Regulation for a period up to three (3) years.

**Section 9. Reporting**

Not later than February 1 of each year, the Procurement Commissioner shall issue a report in writing to the Mayor, the President of City Council, and the Chief Clerk of City Council identifying, with respect to the time period between January 1 and December 31 of the preceding year:

- a. The types of contracts in which a bid preference was awarded; and
- b. The number of each type; and
- c. The name of all LBEs in breach of contract pursuant to Section 8.

**Section 10. Ineligibility**

Upon a finding of any intentional misstatements or noncompliance with any certification relating to LBE status, the Procurement Commissioner may hold the Business Entity ineligible for a local business preference for up to three (3) years.

**Section 11. Effective Date**

These regulations shall take immediate effect and shall apply to all bids opened on or thereafter.