

Administrative Procedures for Business Diversity in the Procurement of Materials and
Contracted Services
(Attachment for Policy No. 612)

PURPOSE

The Office of Procurement Services and the Office of Minority and Small Business Development are responsible for the implementation of Board of Education (“Board”) Policy 612 (“Policy”). The Policy is intended to assert anti-discrimination requirements of The School District of Philadelphia (“District”) and to assist Minority and Women-Owned Business Enterprises (“M/WBE”) and other disadvantaged entities overcome barriers to and stimulate financial development and stability.

These administrative procedures outline the District’s approach to incorporating business diversity processes and anti-discrimination requirements into its procurement and contracting activities. The City of Philadelphia’s Office of Economic Opportunity’s Annual Disparity Study (“Disparity Study”) serves as the foundation for the District’s approach to meeting its business diversity and anti-discrimination goals.

PROCEDURES

A. GOALS AND OBJECTIVES

The District’s Office of Minority and Small Business Development (“OMSBD”), under the Office of Procurement Services (“Procurement Services”), will identify and facilitate meaningful opportunities for M/WBEs through evaluation and establishment of participation goals. OMSBD may also provide opportunities for other disadvantaged businesses to contract with the District.

B. IMPLEMENTATION

OMSBD has the overall responsibility to administer, monitor and enforce M/WBE policies, standards and requirements, and to manage and monitor the District’s utilization of M/WBEs to ensure that businesses owned and operated by minorities and women have full access to and equitable opportunity to participate in the District’s public contracting. Such standards and requirements will be incorporated into Procurement Services’ “Procurement Manual,” which will be updated from time to time and posted on the District’s website. Implementation responsibilities include, among other things:

1. Aligning the M/WBE program with the Policy;
2. Establishing language for bid and proposal solicitations setting forth the objective, enforcement, and sanctions related to noncompliance with the Policy and the District’s anti-discrimination requirements;
3. Creating, maintaining, and distributing a directory of certified M/WBEs;

4. Regularly reviewing the progress of each program office's achievement of M/WBE goals;
5. Ensuring that District solicitations and proposals adhere to the procurement procedures;
6. Monitoring all prime contracts with M/WBE goals throughout the duration of the contract to ensure that all efforts are made to comply with goals and requirements;
7. Providing quarterly reports of M/WBE participation that can be readily accessed and distributed to District leadership and the Board; and
8. Providing a dedicated resource to manage the promotion, development and growth of M/WBEs for the District's public contracting opportunities.

The objectives of the implementation activities conducted and overseen by OMSBD are to establish an effective program to encourage meaningful participation of M/WBEs, be accountable for achieving measurable outcomes of diversity engagement in District contracting, and be open and transparent in the implementation and documented outcomes of diversity engagement.

The District's implementation of the Policy will be guided by the suitability, capacity, and availability of businesses in the marketplace to ensure the delivery of quality goods and services.

Responsibilities and Duties

1. Procurement Services delegates OMSBD to implement both the administration of the Policy and administrative procedures requiring diversity inclusion in contracting and procurement, and the monitoring of (i) adherence to the Policy throughout all applicable offices in the District, and (ii) Vendors' obligations and performance consistent with the Policy, including sanctions for breach of agreed upon M/WBE and diversity participation commitments.
2. OMSBD is responsible for overall implementation, reporting and monitoring of the M/WBE program, including day-to-day oversight of the District's compliance with the Policy. OMSBD will provide training opportunities for District staff and prospective vendors.
3. Program office administrators are responsible for supporting their program office's achievement of M/WBE goals and maintaining contract information required to support reporting and contract compliance efforts.
4. The Office of General Counsel ("OGC") supports District compliance with all applicable laws and regulations and assists District program offices in achieving their objectives involving contract preparation.

A. Annual Goals

OMSBD is responsible for developing annual participation rates for M/WBEs in the procurement and contracting business of the District. These rates, and participation goals for individual contracts, are based on the Disparity Study, which analyzes utilization of M/WBEs in relation to the availability of such firms to compete for business and contracts.

These ranges represent the percentage of M/WBE and diversity 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 minority-owned, woman-owned, and other disadvantaged businesses available to perform various elements of the contract.

B. Accountability

Responsibility to implement the Policy rests in all District program offices, which shall be accountable for promoting diverse participation and seeking to reach participation goals established by OMSBD. OMSBD will provide training for program offices regarding diversity in contracting, and assist program offices with identifying opportunities to contract with M/WBEs and other disadvantaged businesses whenever possible. District program offices shall further cooperate with OMSBD by establishing participation goals and furnishing information to enforce compliance with the Policy. OMSBD will further collaborate in program offices' evaluation of contractor performance pertaining to achievement of participation goals and commitments. OMSBD shall similarly provide vendors with (i) resources to help identify diverse suppliers and partners, and (ii) assistance with compliance and reporting.

C. Articulation of Policy in Solicitations

OGC and OMSBD will develop standard language stating the objective of the Policy for use in all bid solicitations and requests for proposals (collectively "Solicitation(s)").

D. Contracting Requirements

Procurement Services maintains a "Procurement Manual" providing guidelines for the District's procurement and contracting processes. OMSBD shall devise the following for incorporation into the Procurement Manual:

1. Participation Ranges

OMSBD shall establish a specific M/WBE participation range ("Participation Range") for each Solicitation. OMSBD shall require each bidder or proposer (collectively "Respondent") to include, in its Solicitation response, a plan to meet the Participation Range that includes the dollar amounts, percentage of overall contract value and/or scope of work to be performed by M/WBEs ("Participation Plan"). The District may also consider workforce diversity economic opportunity plans that would allow a Respondent

to satisfy part of the Participation Range. OMSBD may consider a Respondent's good faith efforts to secure meaningful M/WBE participation and inability to satisfy the Participation Range in lieu of a valid Participation Plan.

2. Contractor Responsibilities

The District requires Respondents to covenant, represent, and warrant that they, and their subcontractors and partners, as appropriate, commit to adhering to diversity goals, anti-discrimination laws and policies, and workforce management practices that promote meaningful and substantial participation of M/WBEs and other disadvantaged business enterprises throughout the entire life of a contract and subsequent amendment.

The District considers commitments in a Participation Plan as material representations upon which the District relies in awarding and signing a contract. The Parties shall incorporate the Participation Plan as a part of the contract between the School District and a contractor, and the Participation Plan shall be enforceable like any other contractual term, covenant or condition, in the manner set forth in the contract.

If a vendor does not make a good faith effort to comply, the District may pursue available remedies. Sanctions for breach of a Participation Plan may include suspension, disqualification or debarment from future contracting opportunities with the District, contract termination, withholding of payment, or other remedies.

The District shall require vendors to keep appropriate records and periodically report to the District regarding use of M/WBEs and other certified diverse businesses. Reporting areas include business enterprise classifications, types of contracts, dollar value of contracts and work awarded to M/WBEs, actual dollars received by M/WBE contractors, workforce diversity, and progress toward attaining participation goals.

3. Diversity Certifications

To verify a company's status as a certified M/WBE or any other diverse certification, the District will, with limited exception, recognize only those third-party certifications identified in the Procurement Manual. The District may recognize other third-party certification from certifying agencies not included in the Procurement Manual at the discretion of Procurement Services.

As part of its review of overall achievement of District diversity goals, OMSBD will also monitor contracts for minor professional services or sole source contracts that are not the subject of a Solicitation, but which include a Participation Plan.

C. MONITORING AND REPORTING

OMSBD and Procurement Services shall monitor the implementation of the Policy throughout the entire cycle of the procurement and contracting process. All Solicitations and executed contracts will contain language specifying rights and obligations for monitoring and reporting of OMSBD, Procurement Services, and vendors. OMSBD shall monitor the bidding and proposal frequency and success of M/WBEs and other diverse businesses as prime contractors, and through prime contractors' payments to M/WBEs and other diverse businesses.

To ensure District accountability and vendors' compliance with the Policy, Procurement Services and OMSBD shall analyze overall District, departmental, and contract specific performance, including:

1. Assisting with program office monitoring of contract performance by conducting post-award compliance reviews and on-site inspections, to ensure that the vendor meets diversity participation commitments and other contract requirements;
2. Monitoring prime contractors' payments to M/WBEs and other contractors utilized through payment reporting and acceptance of payments by sub-contractors;
- C. Monitoring the bidding and proposal frequency and success of M/WBEs and other disadvantage businesses as prime contractors;
- D. Reporting findings of discrimination and/or exclusion to the Superintendent or designee;
- E. Recommending withholding of payments or contract termination, suspension, disqualification, debarment, or other relief, if OMSBD finds noncompliance with diversity participation commitments; and
- F. Recommending additional training or supports for program offices that consistently fail to achieve participation benchmarks.

MAINTENANCE SCHEDULE

OMSBD shall review the policy annually and recommend for Board consideration any changes necessary to achieve the goals of the policy. OMSBD will also review these administrative procedures annually and make any revisions necessary to implement the policy.