

THE SCHOOL DISTRICT OF PHILADELPHIA

SECTION: FINANCES
TITLE: Disqualification, Suspension or
Debarment of Bidders
ADOPTED: June 16, 1986
REVISED: April 25, 1994

610.1 DISQUALIFICATION, SUSPENSION OR DEBARMENT OF BIDDERS

Purpose

This policy sets forth standards to determine what bidders are not responsible and procedures to disqualify or suspend or debar non-responsible bidders from contracting or subcontracting with the School District. It applies to all contracts which the School District is required by law to award to the lowest responsible bidder.

The School District shall solicit or accept bids from and shall award contracts to or consent to subcontracting only with responsible bidders. Bidders, contractors, or affiliates may be disqualified, suspended or debarred as not responsible to protect the School District's and the public's interest in accordance with the standards and procedures adopted by the School District and any other applicable law.

Authority

The School District adopts this policy and procedure under its powers to make rules and regulations to manage school affairs and competitive bidding provisions of the Public School Code, 24 PA Sec. 5-510, 7-751(a), 8-807.1 (1985 Supp.).

Definitions

"Adequate evidence" means evidence sufficient to support a reasonable belief in the truth of the fact or conclusion it is offered to support and does not require proof in accordance with technical rules of evidence.

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Bidders" means any person responding to an invitation for bids or otherwise seeking to contract with the School District or with contractors.

"Contractor" means any person independent of the School District who does or seeks to do business with the School District pursuant to mutual agreement and includes persons who subcontract with School District contractors.

"Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo condendere.

"Debarment" means exclusion as a contractor for a specified time; a contractor so excluded is "debarred."

"Disqualification" means exclusion as a contractor from award of any particular contract with the School District; a contractor so excluded is "disqualified."

"District" means the School District of Philadelphia.

"Hearing Officer" means the Superintendent or any officer or employe so designated by the Superintendent.

"Indictment" means a formal accusation of a criminal offense and includes an information or other filing by a competent authority charging a criminal offense.

"Legal proceedings" means any civil or criminal judicial proceeding, including appeals.

"Person" means an individual, company, firm, association, corporation, partnership, or other legal entity.

"Public prosecutor" means an official having legal authority in any jurisdiction to file or to prosecute indictments.

"Superintendent" means the Superintendent of Schools of The School District of Philadelphia.

"Suspension" means exclusion as a contractor for an indefinite time determined by some stated future occurrence; a contractor so excluded is "suspended."

Guidelines

Cause for Debarment

The District may debar a bidder or contractor or affiliate for any one or more of the following causes:

1. Conviction of or civil judgment for:

- a. Fraud or crime in connection with obtaining, attempting to obtain or performing a public contract or subcontract;

b. Violation of any law showing a lack of business or personal integrity or honesty, including but not limited to bribery, embezzlement, extortion, forgery, falsification or destruction of records, false statements, theft or receiving stolen property;

c. Violation of any federal or state antitrust laws;

d. Violation of any laws governing labor or employment, including wages and hours, child labor, or discrimination; or

e. Violation of any election or campaign finance laws.

1. Unsatisfactory performance or failure to perform in accordance with the terms of one or more contracts with any person, provided that such acts or failures to act occurred within a reasonable period of time before or during the District's decision;
2. Providing false or misleading information as part of any prequalification statement, bid or contract, including but not limited to financial statements, fair employment forms, or product descriptions;
3. Unauthorized payments, gifts or other valuable consideration to any person having any official duties, direct or indirect, in connection with bidding, awarding or performing District contracts;
4. Debarment from contracting by any other federal or state governmental body; or
5. The use by employment, subcontract or other formal association of former School District of Philadelphia employees who have resigned or have been dismissed in accordance with administrative due process procedures for reasons of moral turpitude or breach of fiduciary duty, where the former employee holds a position which brings him/her into contact with students or has fiduciary responsibilities.
6. Any other lawful reason.

Period of Debarment

1. Debarment shall be imposed for a specified time not to exceed three years unless reasons for a longer period are stated in the notice of debarment.

2. The District may extend debarment for an additional specified period at any time before a debarment expires upon adequate evidence in addition to that which supported the original debarment in accordance with the procedure for debarment.
3. The District may reduce the period of debarment upon the bidder's or contractor's written request supported by adequate evidence of good cause, such as:
 - a. Reversal of the conviction or judgment upon which the debarment was based without a new trial within a reasonable time;
 - b. Bona fide change in ownership or management of the bidder or contractor; or
 - c. Elimination of other causes for which debarment was opposed.

Procedure for Debarment

1. The District official responsible for soliciting bids on the class or classes of contracts at issue shall begin debarment proceedings by giving notice of intent to debar to the bidder or contractor and any specified affiliates by certified mail, return receipt requested, stating:
 - a. The intent to debar for a specified period;
 - b. The causes for debarment with a summary of the information on which the findings of causes are based; and
 - c. The debarment is effective immediately and the decision will become final within twenty (20) days unless the bidder or contractor or affiliate submits a written response within that time opposing the debarment, including information raising a genuine dispute as to the facts on which it is based or to the application of this policy.
1. The District shall make a copy of Board Policy No. 621 available to bidders, contractors, and affiliates with notice of debarment.
2. If a bidder or contractor timely opposes debarment, the District official who issued the notice of debarment shall promptly refer the notice of debarment and the bidder, contractor's or affiliate's response to the Hearing Officer, who shall:
 - a. Schedule an informal hearing within fifteen (15) days, with written notice to the parties, at which the District and the bidder, contractor or affiliate may present evidence on issues raised by the notice of debarment and the response thereto;

b. Issue a written decision within fifteen (15) days of the hearing, either sustaining or over-ruling the debarment, and stating (i) a summary of the evidence presented, (ii) conclusions applying this policy to the facts, serving this decision on the bidder, contractor or affiliate by certified mail, return receipt requested.

1. The Hearing Officer's decision shall be final.

Cause for Suspension

The District may suspend a bidder, contractor or affiliate for any one or more of the following causes:

1. Indictment for any crimes covered in Section 6.A(1) or
2. Committing irregularities (a) of a serious nature in business dealings with the District or (b) seriously reflecting on the propriety of further business dealings with the District.

Period of Suspension

Suspension shall be imposed for a period pending the outcome of criminal proceedings or the completion of an investigation and such legal proceedings as may ensue.

Procedure for Suspension

1. The District official responsible for soliciting bids on the class or classes of contracts at issue shall begin suspension proceedings by giving notice of intent to suspend to the bidder or contractor and any specified affiliates by certified mail, return receipt requested, stating:
 - a. The intent to suspend and the period;
 - b. The causes for suspension with a summary of the information on which the findings of causes are based; and
 - c. The suspension is effective immediately and the decision will become final within twenty (20) days unless the bidder, contractor or affiliate submits a written response within that time

opposing the suspension, including information raising a genuine dispute as to the facts on which it is based or to the application of this policy.

1. The District shall make a copy of Board Policy No. 621 available to bidders, contractors or affiliates with notice of suspension.
2. If a bidder, contractor or affiliate timely opposes suspension, the District official who issued the notice of suspension shall promptly refer the notice of suspension and the bidder's or contractor's or affiliate's response to the Hearing Officer who shall:

a. Schedule an informal hearing within fifteen days, with written notice to the parties, at which the District and the bidder, contractor or affiliate may present evidence on issues raised by the notice of suspension and the response thereto;

b. Issue a written decision within fifteen (15) days of the hearing, either sustaining or over-ruling the suspension, and stating (i) a summary of the evidence presented, (ii) finding of fact based on adequate evidence and (iii) conclusions applying this policy to the facts, serving this decision on the bidder or contractor by certified mail, return receipt requested.

1. The Hearing Officer's decision shall be final.

Cause for Disqualification

A bidder or contractor may be disqualified with respect to any particular bid or contract award for any one or more of the following causes:

1. Any cause set forth in Section 6.A or 7.A of this policy;
2. Inadequate financial resources to perform the contract;
3. Inadequate experience, organization, or technical resources to perform the contract; or
4. Any other facts or circumstances showing a reasonable likelihood of inability to perform the contract.
5. Discrimination in the bidder's or contractor's employment or business practices on the basis of race, color, sex or national origin.

Period of Disqualification

Disqualification may be imposed for any particular bid or contract award and applies only to that bid or contract award.

Procedure for Disqualification

1. The District official responsible for soliciting bids on the class or classes of contracts at issue or the District's official responsible for minority and women's business development shall begin disqualification proceedings by giving notice of intent to disqualify to the bidder or contractor by regular mailing, stating:
 - a. The intent to disqualify and the bid or contract involved;
 - b. The causes for disqualification with a summary of the information on which the findings of causes are based;
 - c. The date the contract award is expected to be considered by the Board of Education; and
 - d. The disqualification shall be effective to render the bidder or contractor ineligible for the contract award at issue unless the bidder or contractor submits a written response before contract award by the Board of Education, including information raising a genuine dispute as to the facts on which it is based or to the application of this policy.
1. The District shall make a copy of Board Policy No. 621 available to bidders or contractors with notice of disqualification.
2. If a bidder or contractor timely opposes disqualification, the District official who issued the notice of disqualification shall promptly refer the notice of disqualification and the bidder's or contractor's response to the Board of Education which shall consider issues raised by the notice and response in making its decision on the contract award involved.

Responsibility for Agents

Bidders, contractors, and affiliates are deemed responsible for the acts of persons acting for or on their behalf, such that:

1. The fraudulent, criminal or other improper conduct of any officer, director, shareholder, partner, employe or other associate may be imputed to the bidder, contractor or affiliate when the conduct occurred in connection with the individual's performance of duties for or on behalf of the bidder, contractor or affiliate, or with his/her knowledge, approval or acquiescence. Acceptance of the benefits derived from such conduct shall be evidence of such knowledge, approval or acquiescence;
2. The fraudulent, criminal or other improper conduct of bidder, contractor or affiliate may be imputed to any officer, director, shareholder, partner, employe, or other associate who participated in, knew of or had reason to know of the conduct; and

3. The fraudulent, criminal or other improper conduct of one bidder, contractor or affiliate participating in a joint venture or similar arrangement may be imputed to other participating bidders, contractors or affiliates if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval or acquiescence of other participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

Effect on Executory Contracts

A. The District may continue in effect any contracts with debarred or suspended persons which have not been fully performed at the time of debarment or suspension in accordance with their terms.

B. The District shall not renew or extend contracts with debarred or suspended persons unless the Superintendent or a designee states in writing to the Board of Education the compelling reasons for renewal or extension.

Restrictions on Subcontracting

When a debarred or suspended contractor is proposed as a subcontractor for any subcontract subject to District approval, the District shall not approve such subcontractor unless the Superintendent or a designee states in writing the compelling reasons for such approval.

Contract Not Requiring Competitive Bidding

The District may exclude any debarred or suspended person from consideration for any contract award not requiring competitive bidding.

Records

The Hearing Officer shall maintain records of all persons debarred, suspended, or disqualified for the purpose of enforcing this policy.

Delegation of Responsibility

The Superintendent of Schools is generally responsible to implement and enforce this policy and may designate subordinate officers or employees to perform any functions provided for in this policy.

Legal References:

Board Resolution: April 25, 1994