

Appendix S Policy 610.1 Responsible Contracting with the District Amended 022019
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Book	Policy Manual
Section	600 Finances
Title	Responsible Contracting with the District
Code	610.1
Status	Active
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Purpose

The district recognizes that there is a need to ensure that all work on public construction and maintenance contracts is performed by responsible, qualified firms that maintain the capacity, expertise, personal and other qualifications and resources necessary to successfully perform public contracts in a timely, reliable and cost-effective manner.

To effectuate the purpose of selecting responsible contractors for public contracts and to protect the district's investments in such contracts, prospective contractors and subcontractors should be required to meet pre-established, clearly defined, minimum standards relating to contractor responsibility, including requirements and criteria concerning technical qualifications, competency, experience, adequacy of resources, including equipment, financial and personnel, and satisfactory records regarding past performance, safety, law compliance and business integrity.

~~Further, due to the critical impact that skilled construction craft labor has on public works projects, and due to the limited availability of skilled construction craft labor and imminent craft labor skill shortages, it is necessary to require contractors and subcontractors to participate in established, formal apprenticeship training programs as a condition of bidding for the purpose of both promoting successful project delivery and ensuring future workforce development.~~ The district ~~also~~ recognizes that it is beneficial to the local community to ensure that firms receiving public contracts provide adequate wages and benefits to their employees and utilize fair business ~~and~~ employment ~~and training~~ practices that have a positive impact on local communities affected by such contracts. The district further recognizes that the benefits inherent in employing persons in minority groups reflective of the minority population in the local community and desires to ensure that firms receiving public contracts make their best effort to employ minorities in their workforces.

Therefore, the district shall require compliance with the provisions of this policy by business entities seeking to provide services to the district as specified herein. The requirements of this policy are intended to supplement, not replace, existing contractor qualification and performance

standards or criteria currently required by law, Board policy or contracting documents. However, in the event that any of the provisions of this policy conflict with any Board policy or contracting documents of the district, this policy shall prevail.[1]

Guidelines

Responsible Contractor Requirements

All contractors and subcontractors of any tier that perform work, or any portion of a work, valued at over \$25,000.00 on any public facility or public works project, including construction, alterations, renovation, repair, service or maintenance work, shall meet the requirements of this policy.

All firms engaged in contracts covered by this policy shall be qualified, responsible contractors or subcontractors that have sufficient capabilities in all respects to successfully perform contracts on which they are engaged, including the necessary experience, equipment, technical skills and qualifications and organizational, financial, and personnel resources. Firms bidding on public contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law compliance, integrity and business ethics.

All firms engaged in contracts covered by this policy shall agree to and comply with workforce diversity requirements outlined herein for the duration of the entity's contractual relationship on public works with district schools. To meet the workforce diversity requirements, the firm must make a good faith effort to maximize the number of minority employees employed in its workforce. The firm demonstrates its good faith effort by, during the Certification process outlined below, presenting to the district written and verifiable documentation of the following steps taken by the firm:

1. Interviewing graduates from the joint Erie Housing Authority and Erie's Public Schools "Step-Up" Pre-Apprentice Program.
2. Notifying each subcontractor, if any, with whom the firm has contracted to perform the work, of the workforce diversity requirements as outlined in this section and the firm's commitment to compliance with these requirements, provide the subcontractor with the workforce diversity requirements as outlined in this policy, and require that the subcontractor cooperate with the firm's effort to comply.
3. Notify the district if the firm has a good faith belief that a subcontractor covered by these requirements has failed to comply.
4. Prepare and send outreach letters concerning job opportunities to, at a minimum and among other like organizations, the following organizations and entities:
 - a. All public housing tenant organizations located in the City of Erie;

- b. All public housing offices located in the City of Erie;
 - c. Erie City and County Affirmative Action Offices;
 - d. Neighborhood centers located in the City of Erie, including, but not limited to the John F. Kennedy Center, Martin Luther King Center, Booker T. Washington Center;
 - e. The local office of the National Association for the Advancement of Colored People;
 - f. The local office of the Multicultural Center;
 - g. The local office of the International Institute; and
 - h. Women's Organizations, including, but not limited to, the Young Women's Christian Association, Grass Roots Opportunities for Women, Horizon House, Minority Health Education Delivery System, and Community House Inc.
5. All written documentation of these steps must be verifiable and provided to the district during the Certification process outlined below and must be made available to the district upon request.
- a. Firms may provide written documentation in the following forms:
 - i. Copies of correspondence;
 - ii. Interview notices or schedules;
 - iii. Notices sent to interviewees on the disposition of their job application; or,
 - iv. Monthly employment utilization reports.
6. In lieu of the above process, a firm may submit other evidence to the district which show the firm's current and ongoing best faith efforts at achieving or maintaining workforce diversity.

Contractor Responsibility Certifications

As a condition of performing work on a public works contract subject to this policy, a general contractor, construction manager or other lead or prime contractor seeking award of a contract shall submit a Contractor Responsibility Certification at the time it submits its bid for contract.

The Contractor Responsibility Certification shall be completed on a form provided by the district and shall reference the project for which a bid is being submitted by name and contract or project number.

In the Contractor Responsibility Certification, the construction manager, general contractor or other lead or prime contractor shall confirm the following facts regarding its past performance and work history and its current qualifications and performance capabilities:

1. The firm has all valid, effective licenses, registrations or certificates required by federal, state, county, or local law, including, but not limited to, licenses, registrations or certifications required to: (a) do business in the City of Erie; and (b) perform the contract work it seeks to perform. These shall include, but not limited to, licenses, registrations or certificates for any type of trade work or specialty work which the firm proposes to self-perform.
2. The firm meets the bonding requirements for the contract, as required by applicable law or contract specifications and any insurance requirements, as required by applicable law or contract specifications, including general liability insurance, workers' compensation insurance and unemployment insurance requirements.
3. The firm has not been debarred by any federal, state or local government agency or authority in the past three (3) years.
4. The firm has not defaulted on any project in the past three (3) years.
5. The firm has not had any type of business, contracting or trade license, registration, or other certification suspended or revoked in the past three years.
6. The firm has not ~~committed been cited for~~ a willful violation of federal or state safety laws as determined by a final order of a court or government agency in the past three (3) years.
7. The firm and its owners have not been convicted of any crime relating to the contracting business by a final decision of a court or government agency in the past ten (10) years.
- 7.8. The firm has no tax liabilities to Erie Public Schools or has filed a timely administrative or judicial appeal if such liabilities exist.
- 8.9. The firm has not within the past three (3) years been found by a final decision of a court or government agency in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, prevailing wage laws, environment laws or others, where the result of such violation was the payment of a fine, back pay damages or any other type of penalty in the amount of \$1,000 or more.

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9.10. The firm will pay all craft employees that it employs on the project the current wage rates and benefits as required under applicable federal, state or local wage laws.

10.11. The firm has made its best efforts to comply with the workforce diversity requirements outlined in this policy.

12. The firm shall either:

~~11.A.~~ participates in a Class A Apprenticeship Program for each separate trade or classification in which it employs craft employees and shall continue to participate in such program or programs for the duration of the project.

~~A.1.~~ For purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status for at least three (3) of the past five (5) years.

~~2.~~ ~~If a firm is identified as the lowest responsible bidder or otherwise selected as the prospective awardee or as a subcontractor of an awardee, it shall provide appropriate documentation, as determined by the district, to verify it meets the requirements of this section for each trade or classification of craft workers it will employ on the project. This verification shall be provided prior to performance of work by the firm; or~~

B. Meet the requirements of a responsible contractor as established by the Pennsylvania Department of General Services under Management Directive 215.9 Amended. In determining a contractor to be responsible under this subsection, the District shall consider the following factors:

a) Current suspension or debarment by the Commonwealth of Pennsylvania, federal government, or any other state or governmental entity.

b) Capacity and ability to perform within the established time schedule and in accordance with the plans and specifications of the contract.

c) Default, unsatisfactory or deficient performance in past or current contracts.

d) Financial stability and economic capability to perform all contract requirements.

e) Any other information, act or omission indicating lack of skill, ability, capacity, quality control, business integrity, or honesty that seriously and directly affects the present responsibility of the contractor, including, but not limited to:

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i. Making false statements, providing misleading or incomplete information to the District.

ii. Failing to provide information or cooperate with the District administration.

iii. Offering unbalanced bids.

iv. Discrimination in violation of law or regulation in the conduct or business as a contractor.

v. The commission of any state or federal offense or criminal charges.

~~B.~~ vi. Investigation pending by a federal or state agency or under investigation by a federal or state agency within the past five years.

~~12.~~13. The firm has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible subcontractors.

~~13.~~14. The firm will maintain all qualifications, resources and capabilities referenced in this certification throughout the duration of this project.

~~14.~~15. The firm shall notify Erie's Public Schools within seven days of any material changes to all matters attested to in this Certification.

~~15.~~16. The firm understands that the Contractor Responsibility Certification required by this section shall be executed by a person who has sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, that the information submitted is true, complete and accurate.

Execution of the Contractor Responsibility Certification required by this policy shall not establish a presumption of contractor responsibility and the district may require any additional information it deems necessary to evaluate a firm's status as a responsible contractor, including technical qualifications, financial capacity or other resources and performance capabilities. The district may require that such information be included in a separate Contractor Responsibility Certification.

If the submitting firm has ever operated under another name or controls, is controlled by, or controlled or was controlled by, another company or business entity, whether as a parent company, subsidiary or in any other business relation, it shall attach a separate statement to its Contractor Responsibility Certification that explains in detail the nature of any such relationship. Additional information may be required from such an entity if the relationship in question could potentially impact contract performance.

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If a firm fails to provide a Contractor Responsibility Certification required by this section, it shall be ~~deemed non-responsive and~~ disqualified from the bidding. No action of any nature shall lie against the district because of its refusal to accept a bid for failing to provide information required by this section.

Notice of Intent to Award Contract

After it has received bids for a project, the district may issue a Notice of Intent to Award Contract to the firm offering the lowest responsive bid.

Such Notice shall be issued immediately or as soon as practicable after bids are submitted. ~~Notwithstanding the foregoing, the issuance of a Notice of Intent to Award Contract shall not be considered an award of any contract or bid, and shall stipulate that the contract award will be conditioned on issuance of written Contractor Responsibility Determination, as required by this policy and any other conditions determined appropriate by the district.~~

Subcontractor Lists, Subcontractor Responsibility Certifications

At the time it submits its bid for contract, each bidder shall submit to the district a Subcontractor List containing the names of subcontractors that will be used for the referenced project, their addresses, and a description of the work each listed subcontractor will perform on the project.

For each subcontractor required to be disclosed to the district in a bid, the bidder shall also submit ~~Subcontractor Responsibility Certifications~~, which shall be executed by the respective subcontractors on forms prepared by the district and shall contain the same information and representations required in Contractor Responsibility Certifications as outlined above in this policy, including verification of apprenticeship qualifications as required by this policy, for each trade or classification of craft workers it will employ on the project. If a contractor cannot provide such certifications, it must instead provide a written explanation of why such certifications cannot be provided.

Subcontractor Responsibility Certifications shall be executed by persons having sufficient knowledge to address all matters in the certifications and shall include an attestation stating, under the penalty of perjury, that all information submitted is true, complete and accurate.

Contractor Responsibility Review and Determination

A determination of contractor and subcontractor responsibility by the district shall be made prior to the issuance of a Notice of Intent to Award Contract. Such determination must be made part of the contract documents.

As part of this review process, the district shall ensure that the Contractor Responsibility Certification, the Subcontractor List, and the Subcontractor Responsibility Certifications, as required by this policy, have been submitted and properly executed.

The district may conduct any additional inquiries to verify that the prospective awardee and its subcontractors have the technical qualifications and performance capabilities necessary to successfully perform the contract and that the firms have a sufficient record of law compliance and business integrity to justify the award of a public contract. In conducting such inquiries, the district may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.

~~If at the conclusion of its internal review, the district determines that all responsibility certifications have been properly completed and executed and if it concludes that the qualifications, background and responsibility of the awardee and the firms on its Subcontractors List are satisfactory, it shall issue a written Contractor Responsibility Determination verifying that the prospective awardee is a qualified, responsible contractor.~~

~~In the event a firm is determined non-responsible, a Responsibility Determination has been revoked or revised after issuance, or if the firm is otherwise disqualified from working for the district per the requirements of this policy, the district shall provide the firm with written notice of any such determination. Notice will be sent as soon as practicable but not later than ten (10) days following said determination. The firm may request a hearing before the district within thirty (30) days of the date of notice. Hearings will be conducted in accordance with the Local Agency Law, 2 Pa.C.S. §§ 551-555.~~

~~If a firm is determined non-responsible as per above, the district shall proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, rebid the project.~~

The Contractor and Subcontractor Responsibility Determinations shall be issued with the Notice of Intent to Award Contract. The Responsibility Determination may be revoked or revised in any manner at any time if the district obtains relevant information warranting any such revocation or revisions.

Public Review Process

The Contractor Responsibility Certification for a firm identified in a Notice of Intent to Award Contract, Subcontractor List and Subcontractor Responsibility Certifications shall be made immediately available to the public for inspection through a publicly accessible website or other comparable means for a period of at least five (5) calendar days.

~~During the public review period, any person or organization may protest a contractor or subcontractor for failing to meet applicable requirements of this policy or on any other relevant grounds by submitting a letter with supporting evidence to the district.~~

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If the district determines that a Contractor or Subcontractor Responsibility Certification contains false or misleading material information that was provided knowingly or with reckless disregard for the truth or omits material information knowingly or with reckless disregard of the truth, the firm for which the certification was submitted shall be prohibited from performing work for the district for a period of three (3) years and shall be subject to any other penalties and sanctions,

including contract termination, available to the district under law. A contract terminated under these circumstances shall further entitle the district to withhold payment of any monies due to the firm as liquidated damages.

A procurement contract subject to this policy shall not be executed until all requirements of this policy have been fulfilled and until Contractor or Subcontractor Responsibility Certifications and Subcontractor Lists have been made available for public inspection for at least five (5) calendar days.

Severability Effective Date

If any provision of this policy shall be held to be invalid or unenforceable by a court of competent jurisdiction, any such holding shall not invalidate any other provisions of this policy and all remaining provisions shall remain in full force and effect.

This policy shall become effective upon adoption and the district shall take such anticipatory administrative action in advance as shall be necessary for the implementation of this policy. The district may adopt administrative regulations implementing this policy.

The requirements of this policy shall not apply to contracts executed prior to the effective date of this policy, except that the exercise of an option on a contract covered by this policy shall be deemed to create a new contract for purposes of this ordinance.

Legal
Pol. 818
Pol. 600
Pol. 610
Pol. 626