

DATE: August 31, 2023

MEMO TO: Gina Roberts, Chair
Finance Committee

FROM: Steve Neaman
Director of Finance

REQUEST: Provide policy direction regarding amendments to the District’s Purchasing Policy (the “Policy”) concerning “Responsible Bidders”.

STRATEGIC DIRECTION SUPPORTED: Leadership

FINANCIAL DATA: There is no financial impact at this time, however there could be over time.

BACKGROUND: Staff is seeking policy direction on whether to amend the Policy to provide that a bidder for a public works (i.e., construction) contract is “responsible” only if the bidder, and its subcontractors, participate in an active apprenticeship and training program approved and registered with the U.S. Department of Labor’s Office of Apprenticeship (a “Program”). The Program is further defined by the US Department of Labor’s Office of Apprenticeship. (See <https://www.dol.gov/agencies/eta/apprenticeship>) Some Commissioners have expressed support for such an amendment.

Issues to discuss and consider include the following:

1. The Downstate Forest Preserve Act provides that contracts for “supplies, material or work involving an expenditure in excess of \$30,000 . . . shall be let to the lowest responsible bidder”. The Act does not define a “responsible” bidder and does not expressly authorize the District to impose a Program requirement.
2. The Policy currently identifies factors to be considered in determining whether a bidder is “responsible”. Those factors include:
 - a. the ability, capacity, and skill of the bidder to perform the contract,
 - b. whether the bidder has the requisite facilities, plant, capital, financial resources, organization, and staffing to perform the contract successfully and promptly, within the time specified, without delay or interference,
 - c. the character, integrity, reputation, judgment, experience, and efficiency of the bidder,
 - d. the quality of the bidder's performance of previous contracts or services, and
 - e. the previous and existing compliance by the bidder with other contracts and the laws or ordinances relating to said contracts.

3. In addition, the Policy provides that the District reserves the right to require, from any bidder, additional information to ascertain whether it is a “responsible” bidder, including, without limitation:
 - a. information regarding the bidder's business and technical organizations; the bidder’s plant, equipment, and personnel available to perform the contract,
 - b. the bidder's financial resources,
 - c. the experience of the bidder's personnel,
 - d. the bidder's experience in providing the relevant supplies, material, or work,
 - e. a history of the bidder's contract defaults and litigation, and
 - f. a list of the bidder's pending construction or other projects and outstanding bids and proposals.

4. Under the Illinois Procurement Code, which includes purchasing requirements for construction contracts entered into by State agencies, a bidder is a “responsible bidder” only if it and its subcontractors participate in applicable apprenticeship and training programs approved by and registered with the U.S. Department of Labor’s Bureau of Apprenticeship and Training. 30 ILCS 500/30-22.

5. Per the US Department of Labor (“U.S. DOL”) website and under the Illinois Procurement Code, the Program requirement applies only to public works (i.e., construction) projects, but does not apply if it would jeopardize receipt or use of federal funds in support of such project. If the District proceeds with such an amendment, it should provide that the Program requirement does not apply if it would jeopardize the District’s receipt of State or other grant funds.

6. The Employment and Training Administration (“ETA”) is an agency within the Department of Labor that administers Programs. According to its website, the mission of the ETA is “to contribute to the more efficient functioning of the U.S. labor market by providing high-quality job training, employment, labor market information, and income maintenance services primarily through state and local workforce development systems”.

7. On the U.S. DOL website, 2021 data indicates the following about active apprentices:

GENDER

Male	472,052	86.15%
Female	73,677	13.45%
Did not identify	<u>2,193</u>	0.40%
TOTAL	547,922	

RACE

White	251,299	45.86%
Black/African American	41,788	7.63%
Multiple Race	129,729	23.68%
Native Hawaiian or other Pacific islander	5,677	1.04%
American Indian or Alaska native	6,523	1.19%
Asian	8,268	1.51%
Did not identify	<u>104,638</u>	19.10%
TOTAL	547,922	

ETHNICITY

Hispanic	117,651	21.47%
Non-hispanic	321,720	58.72%
Did not identify	<u>108,551</u>	19.81%
TOTAL	547,922	

AGE

24 and under	207,012	37.78%
25-34	217,526	39.70%
35+	111,893	20.42%
did not identify	<u>11,491</u>	2.10%
TOTAL	547,922	

VETERAN STATUS

Veteran	32,898	6.00%
Non-Veteran	364,183	66.47%
Did not identify	<u>150,841</u>	27.53%
TOTAL	547,922	

UNION vs. NON-UNION

Employer only	291,225	53.15%
Joint Labor-Management	<u>256,698</u>	46.85%
TOTAL	547,923	

8. Employer-Only Programs are wholly administered by the contractor with no intermediary, compared to Joint Labor-Management Programs between a contractor employer and a labor organization, most often a union.
9. Currently, the District is complying with Section 18-50.2 of the Illinois Property Tax Code (35 ILCS 200/18-50.2), which requires each taxing district with a property tax levy exceeding \$5 million to make a good faith effort to collect and electronically publish data from all its vendors and subcontractors as to whether the vendor or subcontractor is a minority-owned, women-owned, or veteran-owned business, as defined in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (“Business Enterprise Requirements”). Additionally, the District sometimes receives state or federal grants that impose the Business Enterprise Requirements. There is a concern that a Program requirement may preclude from consideration smaller contractors and subcontractors without Programs, including otherwise qualified minority-owned, women-owned, or veteran-owned contractors.
10. There is a concern that the number of contractors available for public works projects may be affected by adopting a Program requirement, as some contractors may not participate in a Program and therefore will be excluded from consideration for construction contracts. This may result in increased project costs, as there could be smaller pools of potential bidders and increased compliance requirements.
11. Staff was asked if neighboring forest preserve districts have adopted a Program requirement and we found that, to date, two of the collar county forest preserve districts require the Program [Forest Preserve District of Will County and Forest Preserve District of DuPage County]. In addition, the County of Lake has imposed a Program requirement that largely mirrors the Illinois Procurement Code requirement.
12. The District is a non-home rule unit of government and, as such, has the authority that is expressly granted to it or necessarily implied by those express powers. As stated above, the Downstate Forest Preserve Act does not define a “responsible” bidder, nor does it expressly authorize a Program requirement. If the Committee desires to further explore a Program requirement, then staff requests direction to authorize Corporate Counsel to research the legality of including a Program requirement, as part of the responsible bidder requirements within the Policy.

REVIEW BY OTHERS: Executive Director, Chief Operations Officer, Manager of Board Operations and Corporate Counsel.