



The Philadelphia Procurement Department

Regulations Governing Concessions Other Than By Awarding of Contracts to the Highest Responsible Bidder

Section 1. Authority

These Regulations governing the granting of concessions other than by awarding of concessions to the highest responsible bidder (the "Regulations") are promulgated pursuant to Sections 8-200 and 8-201 of The Philadelphia Home Rule Charter ("PHRC") and Title 17 of The Philadelphia Code (the "Code").

Section 2. Purpose

The taxpayers and residents of The City of Philadelphia (the "City") should receive the best value possible from the City's procurement system. The Concessions that will provide the best value for the City cannot always be selected solely on the basis of the highest revenue to the City. These Regulations are promulgated to ensure that, when the City takes into consideration other important factors in addition to the amount of the Concession Fee paid to the City, the award of the contract will be made in an open, fair and transparent process providing Best Value to the City.

Section 3. Definitions

- (a) In these Regulations, the following definitions apply:

ACDBE means Airport Concession Disadvantaged Business Enterprise as defined by 49 CFR 23 and 49 CFR 26.

Best Value means the award of contracts for Concessions using competitive selection criteria in addition to the revenue to be received by the City from a Concessionaire.

City means The City of Philadelphia acting in its capacity as a municipal government.

City Department means any City department, agency, board or other unit of City government that is subject to PHRC Sections 8-200 and 8-201.

Commissioner means the Procurement Commissioner or the person designated to act for the Commissioner in the Commissioner's absence.

Concession(s) means the sale of products or the rendition of services for consideration on or using City property, if not otherwise authorized under a lease, sublease, or other legal arrangement with the City. "Concession" does not include the sale of products or rendition of services by the City.

Concessionaire means a person or firm who has entered into a contract with the City pursuant to an RFP.

Concession Fee means the revenue to be received by the City from the Respondent, which may include the dollar amount of capital improvements, repairs, and replacements to the City's property pursuant to a Concession contract.

Concession Fee Scoring means the evaluation of the revenue to be received by the City for the rights granted pursuant to the RFP.

Consultant has the meaning set forth in Section 17-1401(6) of the Code.

Department Head means the commissioner, director, chief executive officer or other person responsible for a City Department.

EOP means an Economic Opportunity Plan as may be required by Chapter 17-1600 of the Code.

OEO means the Office of Economic Opportunity or another office designated by the Mayor for review and compliance with the City requirements for diversity and inclusion.

Office of Business Diversity means the City's office ensuring compliance with United States Department of Transportation Disadvantage Business Enterprise (including ACDBE, referenced above) rules applicable to airport concessions and airport construction projects that use Federal Aviation Administration grant funding.

PHL Contracts means the on-line system for public notification of contract opportunities and the award of contracts and the solicitation of proposals and bids, including any successor system(s) or as designated by the Procurement Commissioner.

Proposal means a Respondent's proposal in response to an RFP posted on PHL Contracts.

Respondent means a respondent to a RFP.

RFP means a Request for Proposals.

Selection Committee means the committee formed with the approval of the Commissioner for evaluating and recommending the award of a Best Value contract.

Technical Scoring means the evaluation of a Respondent's Proposal that does not include the Concession Fee to the City.

Section 4. Commissioner's Determination that Best Value Should be Used

(a) Certain Concessions have qualitative characteristics that make them better suited to Best Value instead of awarding a contract to the highest responsible bidder. Such characteristics may include the integration of technical or professional service elements, quality differences among proprietary products and services, incorporation of City contracting objectives, including but not limited to, participation in City contracts by disadvantaged business enterprises pursuant to Section 6-109 of the PHRC (related to participation goals), or other attributes of greater value to the City than Concession Fee alone.

(b) City Department Recommendation. When a City Department determines that award of a Concession to the highest responsible bidder may not yield the best value to the City, the City Department shall submit its recommendation to use Best Value selection to the Commissioner using forms issued by the Procurement Department. The recommendation must be approved by the Department Head. The City Department shall provide a description of the proposed Concession(s) including the criteria identified in Section 4 (a) hereinabove. The City Department recommendation shall propose a relative weight for Concession Fee Scoring and Technical Scoring to be used in the evaluation of the Respondents. The Concession Fee Scoring shall be not less than 20% of the total evaluation. The Technical Scoring shall be not less than 20% of the total evaluation. The combined scoring percentages must equal 100%. The proposed

Technical Scoring shall be based on some or all of the following criteria:

- (1) The quality of the Concession(s) proposed, including the product and service characteristics that meet the particular specifications of the requesting City Department;
- (2) The technical, administrative and financial experience and capacity of the Respondent;
- (3) Respondent's management plan and proposed schedule;
- (4) Respondent's experience providing similar products and services;
- (5) The experience and capacity of Respondent's identified staff and subcontractors;
- (6) Respondent's diversity and inclusion plan, whether pursuant to the OEO, ACDBE requirements in the case of airport Concessions, or otherwise;
- (7) Respondent's past performance on City and other contracts including, Respondent's history of indebtedness to the City and whether the Respondent previously has been involved in litigation against the City;
- (8) Respondent's history and plan for work safety and security;
- (9) Benefits to the City of supporting the growth of new or small businesses, including those owned by minority, disabled persons or women;
- (10) Anticipated job creation, particularly in low and moderate-income neighborhoods in Philadelphia;

- (11) Respondent's certification as a Local Business Entity;
- (12) Respondent's in-person presentation to the Selection Committee;
- (13) Respondent's proposed public programs, and whether the programs will be free or subsidized, and any fee or price preferences for the City's residents; and
- (14) Additional economic, environmental, aesthetic, and social benefits of the proposed Concession(s) that support the City Department's objectives, and may include the flexibility to adapt to possible changes over the term of the Concession. Such benefits may include, the nature and type of capital improvements to the City's property, and the Respondent's plan to maintain, repair, and replace the City's property or concession facility over the term of the Concession.

(c) Commissioner's Determination. The Commissioner may agree or disagree with the City Department's recommendation, or may require additional information or modifications. If the Commissioner approves the recommendation, it will be the Commissioner's determination of Best Value and posted on PHL Contracts. The Commissioner's determination shall be final.

(d) Selection Committee. If the Commissioner approves the selection of a Concessionaire using Best Value, the City Department shall propose a Selection Committee and a Selection Committee chair or co-chairs. The Department may ask the Selection Committee to assist in the development of an RFP (including the selection criteria and weighting factors). The Selection Committee shall review proposals and make recommendation for award of a contract. The Selection Committee must be composed of diverse persons having familiarity with the required Concession and appropriate technical, financial or other expertise for addressing the Concession Fee and the qualitative factors of the proposals. Selection Committee members may be drawn from other City Departments having additional or supporting expertise. Selection Committee members may consult with outside consultants, to the extent appropriate, provided such consultants have additional or supporting expertise and such consultants shall have no direct or indirect interests in the outcome of the proposed award. Such consultant shall not be a member of the Selection Committee. The Commissioner shall

review the proposed Selection Committee and may agree, disagree or propose additional members. Each Selection Committee shall be assigned employees from the Procurement Department and the Office of Economic Opportunity. OEO may appoint a member to serve on the Selection Committee or shall conduct a compliance review, as it deems appropriate. For Concessions granted by the Department of Commerce under Section 4-500(c) of PHRC, in lieu of including an employee of OEO as a member of the Selection Committee, the Office of Business Diversity may appoint a member to serve on the Selection Committee or shall conduct a compliance review, as it deems appropriate. The Commissioner's decision respecting Selection Committee members shall be determinative and final.

(e) No Conflicts/Confidentiality. All members of a Selection Committee and any Consultant with whom the Selection Committee members consult, must affirm that they have no conflict of interest in the recommendation of a contract award, and agree that they will not disclose confidential information about the selection process. Selection Committee members will sign standard forms prior to their involvement on the Selection Committee. The forms shall be kept by the City's Procurement Department in the contract file.

Section 5. Solicitation of Proposals

(a) PHL Contracts. The City will solicit proposals for Concessions approved for Best Value through PHL Contracts using an RFP. The contract opportunity posting on PHL Contracts will identify the contract opportunity as using Best Value for selection.

(b) Request for Proposals. The RFP will be prepared by the City Department using an agreed upon template, which may be modified, as appropriate, and reviewed by the City's Procurement Department prior to posting on PHL Contracts. It will be posted for at least 15 calendar days. The RFP will provide the following information: (1) the name of the City Department seeking to enter into the contract; (2) a detailed description of the nature of the Concession(s) being sought; (3) the requirement that no party may be awarded the contract unless it submits a Proposal in accordance with the submission format and deadlines established by the RFP; (4) the requirements of Section 6 (b) below relating to mandatory disclosures by Respondent to a contract opportunity; (5) all required information that a Respondent needs to submit and how to submit such information; and (6) the selection criteria and weightings that will be used to evaluate Proposals, including both the Concession Fee Scoring and the Technical Scoring.

(c) Prequalifications. The City may require that Respondents submit qualification information in advance of submitting a Proposal. If such a pre-qualification process is required, the City shall identify the requirement in the contract opportunity posting on PHL Contracts.

(d) Submittal Deadlines. The posting on PHL Contracts will identify all submittal deadlines. Prequalification information and Proposals submitted after the deadline shall be rejected without further review.

Section 6. Proposal Submission

(a) Prequalification Submittals. If prequalification is required by the PHL Contracts opportunity posting, each Respondent must submit certain business information in advance of qualifying to submit a Proposal. If the Respondent's prequalification information is not submitted the City shall not accept that Respondent's Proposal.

(b) Chapter 17-1400 Compliance. The provisions of Chapter 17-1400 of the Code, including the mandatory disclosure provisions of Section 17-1402, the eligibility provisions of Section 17-1404, and the attribution rules of Section 17-1405, shall apply to all Concessions awarded pursuant to these regulations, as if those Concessions were Non-Competitively Bid Contracts within the meaning of Section 17-1401(12).

(c) Mandatory Disclosures. The disclosure requirements of Chapter 17-1400 of the Code are summarized here; to the extent there is any discrepancy between this summary and the requirements of Chapter 17-1400 of the Code, the requirements of that Chapter shall control. Respondents must disclose the following information as part of their Proposal responding to the RFP: (1) the names and contact information of any Consultants paid by the Respondent in the last year to assist in obtaining the contract opportunity, including the amount paid or, alternatively, a certification stating that no such Consultants were used; (2) campaign contributions made in the preceding two years by either the Respondent or any of its aforementioned Consultants or by any persons whose contributions are attributable to the Respondent pursuant to Section 17-1405 of the Code to political candidates and incumbents who are running for, or currently serving in, a local (Philadelphia) or state-wide elected office anywhere within the Commonwealth (federal campaign contributions are not included) or to any political committee organized in support of any such candidate or incumbent; (3) the names and

contact information of prospective subcontractors which the Respondent intends to use during the term of the contract and the amount or percentage to be paid to each subcontractor; (4) whether the Respondent or any representative of the Respondent has received any requests from City officials or employees in the preceding two years for money or other items of value and, if so, the name and title of each official, the date of the request, the amount requested and, if payment was made in response to the request, the dates and amounts of any such payments; and, (5) the names and titles of any City officers or employees who advised the Respondent in the preceding two years on satisfying minority-, women- or disabled-owned business participation goals, the date any such advice was given and the names of any particular persons whom the City officer(s) or employee(s) recommended to use in satisfying participation goals. All such listed disclosures shall be made on a form or forms provided by the City.

Respondents must commit to meeting the requirements of Chapter 17-1400 of the Code during the term of the contract, which includes updating the disclosures throughout the term of the contract and for one year following the expiration of the contract. Respondents shall also covenant not to make certain disqualifying political contributions.

(d) Tax and Licensing Compliance. Each Respondent shall be required to submit a certification of City tax and regulatory compliance, issued by the City's Revenue Department. If the Respondent is not in compliance with the City's tax and regulatory codes, an opportunity will be provided to enter satisfactory arrangements with the City. If satisfactory arrangements cannot or are not made before selection of a Respondent, the City will not enter into a contract with that Respondent. If a proposed subcontractor is not in compliance and fails to enter into satisfactory arrangements with the City, the non-compliant subcontractor will be ineligible to work on a City contract.

(e) Proposal Format. Proposals must be submitted in the format prescribed in the RFP and address all RFP sections as required. Proposals that do not conform to the required format may be rejected by the City without additional review.

Section 7. Proposal Review

(a) Technical and Concession Fee Evaluation. When evaluating each Proposal, each Selection Committee member will complete Technical Scoring before considering the Concession Fee. The Concession Fee will not be considered until all of the Technical Scorings

have been completed, unless the Commissioner's determination of Best Value states that Concession Fee will be considered concurrently or first. Technical Scoring and Concession Fee Scoring may vary by opportunity.

(1) Technical Scoring. Selection Committee members may consider all information included in the Proposal, any information that is obtained during the prequalification, Respondent interviews or presentations, or reference checks to score each Proposal. The Technical Scoring shall include scoring of all the criteria that were posted with the contract opportunity. Each Selection Committee member must award points for the criteria consistent with the criteria weighting set forth in the RFP. The total number of points received in the criteria will be added together and the Proposal will receive the number of points awarded out of the total possible Technical Scoring points. Some elements of the technical evaluation may require review by individuals or departments that are not members of the Selection Committee. Any such review will be limited to the information essential for the review for that technical evaluation and such reviewer shall be subject to confidentiality requirements.

(i) Economic Opportunity Plan and Participation Ranges. All Proposals shall be reviewed by the OEO and the Office of Labor Standards to determine whether the requirements of the RFP relating to an Economic Opportunity Plan or to the submission of information related to the participation by Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE") and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") have been met. All submissions of information related to the participation by ACDBE's shall be reviewed by the Office of Business Diversity and not the OEO.

(2) Concession Fee Evaluation. The Concession Fee shall be factored so that the highest Concession Fee received by the City is given the highest score and lower proposed Concession Fees are assigned a point value based on their relationship to the highest score. This evaluation shall depend on the criteria and weighting established in the RFP.

(b) Review by Selection Committee Members. Following the submittal deadline for Proposals, the Proposals will be distributed to the Selection Committee members for their review. Proposals will only be released to Selection Committee members following the submission of a conflict of interest and confidentiality statement by all Selection Committee

members to the Procurement Department. Each Selection Committee member shall also receive the score sheet. Following review of the Proposals, the Selection Committee members shall inform the Selection Committee chair as to whether additional information from the Respondents is necessary or beneficial prior to completing the Selection Committee's evaluation. If additional information is requested, the information may be provided to the Selection Committee as a written amendment to the Proposals or in an interview format. Selection Committee members may also ask the chair to schedule interviews if the evaluation process would benefit from meeting with the some or all of the Respondents.

(c) Review by Selection Committee. After all Selection Committee members have completed their reviews of the Proposals, the Selection Committee will meet to discuss their evaluations. Following discussion, the Selection Committee members will submit their scores. Each Selection Committee member may modify his or her scoring after the Selection Committee meets and before submitting their scores. A representative from the Procurement Department will tally all scores. The Proposals will be ranked by their Technical Scoring combined with the Concession Fee Scoring to determine an overall ranking of the Proposals.

Section 8. Recommendation by Selection Committee

(a) The Selection Committee will recommend the Respondent receiving the highest overall score to the Commissioner either for the award of a Concession contract or for additional negotiations of Concession Fee and other terms. Where the overall scores of two or more Respondents are substantially similar, the Selection Committee may recommend more than one Respondent for further negotiations. The Commissioner shall review the recommendation of the Selection Committee and accept or reject the recommendation or require additional action on the part of the Selection Committee.

(1) If the Commissioner rejects the recommendation of the Selection Committee no contract will be awarded.

(2) If the Commissioner accepts the recommendation of the Selection Committee, the Commissioner may award a contract or award it subject to further approvals that may be required by City Council or other approving bodies.

(3) If the Commissioner determines that additional negotiations are appropriate, the Commissioner in cooperation with the Department may negotiate or may request the assistance of other City personnel or City contractors to assist in finalizing the

negotiations. Following additional negotiations, the Commissioner may either: (i) award the Concession contract or award it subject to further approvals that may be required by City Council or other approving body; (ii) terminate negotiations with the Respondent and begin with the Respondent with the next highest overall score; or (iii) determine not to award any Concession contract opportunity under the RFP.

Section 9. Contract Award

(a) If the Commissioner determines it is in the best interest of the City to award a Concession contract, the notice of intent to contract shall be posted on PHL Contracts for a minimum of one week prior to executing the contract.

(b) Pursuant to Section 17-1402(1) (b)(iii) of the Code, no contract shall be awarded unless all required disclosure forms are completed, signed and attached to the Proposal for the contract opportunity. Further, no contract shall be awarded until a determination is made that the Respondent meets the eligibility requirements established in Section 17-1404 of the Code relating to campaign contributions.

(c) The City reserves the right to award contracts to multiple Concessionaires. This will be posted up front in the opportunity.

(d) The notice of intent to contract posting shall include the following information:

- (1) the name of the proposed Concessionaire;
- (2) the reason for the selection of a proposed Concessionaire, including the overall evaluation score of the proposed Concessionaire;
- (3) the names of all other Respondents to the RFP;
- (4) the Concession Fee offered in the proposed contract; and
- (5) the proposed Concessionaire's commitments to subcontractor and workforce diversity.

Section 10. Guidance Documents

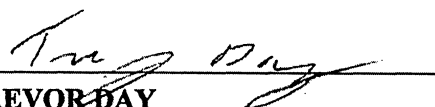
(a) The Procurement Department may issue and distribute guidance to City Departments for the development of Best Value procedures and recommendations for ensuring compliance with these Regulations and other laws. The Guidance may include information on developing appropriate selection criteria and weighting. Sample Technical Scoring and Concession Fee Scoring sheets may be provided.

Section 11. Severability

(a) If any clause, sentence, paragraph or part of this Regulation, or the application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Regulation nor the application of such clause, sentence, paragraph or part to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered.

Section 12. Effective Date

These Regulations shall be effective immediately following the completion of the procedures required by Section 8-407 of the PHRC.


TREVOR DAY
Procurement Commissioner