



Agenda Item No. (3)

To: Rules, Policy & Industrial Relations Committee/Committee of the Whole  
January 27, 2023

From: Brian P. Garrity, Director of Procurement  
Artemisé Davenport, DBE Program Administrator  
Joseph M. Wire, Auditor-Controller  
Denis J. Mulligan, General Manager

Subject: **APPROVE CHANGES TO THE PROCUREMENT MANUAL TO INCORPORATE CONSIDERATION OF SOCIAL EQUITY IN DISTRICT PROCUREMENTS**

### **Recommendation**

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors authorize updates to the District's Procurement Manual that would allow for the inclusion of Social Equity as an evaluation factor in some District best value procurements.

This matter will be presented to the Board of Directors at its January 27, 2023, meeting for appropriate action.

### **Summary**

Over the past year, District Staff and District Attorneys have presented information to the Diversity, Inclusion & Equity Advisory Committee (Committee) regarding the legal framework for diversity and equity in District contracting activities. These discussions included analysis of laws and regulations governing the administration of Federal Transit Administration (FTA), Federal Highway Administration (FHWA), and District-funded contracts and projects, as well as information regarding the Procurement department and its role in the District's Diversity Program.

Pursuant to these discussions, the Committee requested staff to bring forth an item related to consideration of Social Equity as an evaluation factor in some of the District's eligible procurements.

### **What is Social Equity?**

Social Equity is a component of Corporate Social Responsibility (CSR), which is the idea that businesses can support initiatives that positively contribute to the public, the environment, and the economy in which they operate. Social Equity refers to the CSR initiatives that promote the fair, just and equitable distribution of public services and implementation of public policy; and the

commitment to promote fairness, justice, and equity in the business relationships that are essential to the organization's operations.

The District's vendors are an integral part of our communities. Their influence extends to the employees they depend upon, the environment from which they draw their resources, and the marketplace in which they participate. The District seeks to conduct business with suppliers who demonstrate responsible business practices through social equality and positive economic impacts to the community. This self-regulatory action reflects the District's accountability and commitment to contributing to the well-being of the community.

### **Legal Considerations**

Due to Federal and State legal restrictions, some of the District's contracts/procurements would not fall under the proposed Social Equity program. For example, all public works/construction contracts must be solicited on a sealed bid basis and awarded to the lowest responsive and responsible bidder. Likewise, all architectural/design/engineering contracts must be awarded to the most qualified firm.

However, a number of District contracts/procurements are solicited through a best value process, in which the overall combination of quality, price, and other elements such as reliability, standardization, vendor past performance, warranty, and life cycle costs are considered together to determine which proposal provides the greatest overall benefit to the District.

### **District Support for a Social Equity Program**

The District can support the goals of Social Equity through adding a Social Equity evaluation criterion to some best value procurements (those that are procured through a request for proposal (RFP) process) that would provide 5-10 additional points to a firm's score if they can demonstrate their business practices support concepts such as:

- Maximizing employment, training and apprenticeship opportunities among local, disadvantaged populations
- Ethically sourced products/supply chain considerations
- Ensuring competitive pay and comprehensive benefits
- Occupational health and safety initiatives
- Job creation in their community
- Using local suppliers

For certain best value procurements, the District may, as appropriate, encourage Social Equity by adding one or more of the following as selection criteria in the evaluation and ranking of competitive proposals:

- Describe in detail how your company develops a diverse workforce.
- How do you approach on-the-job training, mentoring, technical training and/or professional development opportunities for employees?
- What social equity innovations for cultural and ethnic minority populations can your

company integrate into the delivery of these goods or services?

- Describe your internal policies ensuring you are providing employees with competitive pay and comprehensive benefits including but not limited to health insurance, retirement plans and compensated days off.
- Describe your company's approach to creating jobs in your community and providing support or mentoring for the growth of Disadvantaged Business Enterprises and Small Business Enterprises.

As with other evaluation criteria in best value procurements, the criteria would be evaluated and scored by a committee of District staff and/or technical subject matter experts. The resulting points would be a portion (5% to 10%) of the overall available points. The specific criteria and points available would be discussed and agreed upon by the Procurement Professional and Project Manager for each solicitation.

### **Update to the Procurement Manual**

Authorization of this item would allow for an update to the District's Procurement Manual in the section on RFP evaluations. The proposed change is shown in **bold** below:

*Procurement staff in coordination with the Project Manager shall prepare the Request for Proposals, which shall set forth a particularized statement as to the scope of work required, the experience and qualifications required, project deliverables, proposal schedule, the time in which the project must be completed, and evaluation criteria specifically tailored to the project. Such criteria shall include, but not be limited to, the consultant's proven experience and competence, understanding of the scope of work, financial ability, and resources to perform the work, willingness to cooperate with District procurement and technical staff, **responsible business practices and commitment to supporting social equity**, and proposed method for assuring timely and acceptable performance and management of the work. The RFP shall identify all significant evaluation criteria, including price or cost where required and their relative importance. The evaluation criteria shall not weigh price as more important than the proposer's qualifications, experience, and technical merits if it may result in substandard service to the District.*

Staff will report on solicitations that include Social Equity as an evaluation criterion through the normal Board report authorizing contract award; or for solicitations awarded under the General Manager's authority, through the General Manager's quarterly report on procurement activity.

### **Sample Solicitations Affected by a Social Equity Program**

Examples of District solicitations where CSR considerations could be an evaluation factor could include:

Actuarial Services  
ADA Facilities Assessment  
Banking and Associated Financial Services  
Bus Scheduling Support Services  
Business Continuity Plan Development  
Business Impact Analysis

Business Process Workflow Mapping and Documentation Professional Services  
Cisco and VMWare Professional Services  
Citrix and Microsoft Professional Services  
Executive Search Services  
External Audit Services

Grants Management Professional Services	Printing of Transit Guides and Timetables
Health and Welfare Insurance Consultant Services	Safety & Compliance Assessment Services
Information System Strategic Plan	Security Guard Services
Insurance Advisor and Brokerage Services	Storm Water Compliance Services
Janitorial Services	Strategic Planning
Lease of Bus Tires	Substance Abuse Professional Services
Maximo Consulting Services	Uniform Guidance, Indirect Cost Allocation Plan
On-Call Cyber Security Professional Services	Zero Emission Bus (ZEB) Rollout Plan
On-Call Temporary Staffing Services	
On-Call Video Production Services	
On-Site Medical Services	

**Fiscal Impact**

There would be no cost associated with administering the added evaluation criteria. There is a potential for an increase in some contract award amounts if the top ranked firm were to receive award based on the new criteria and also had a price higher than the second ranked firm. There is no way to measure this potential at this point, however, it is thought to be negligible.