

PHILADELPHIA PARKING AUTHORITY

Procurement Policy

CHAPTER 1. GENERAL PROVISIONS

§ 101. Purpose.

(a) This policy provides a standard reference for the transparent and competitive procurement of supplies, services, and construction by the Authority.

(b) To the extent that any section of this policy conflicts with the Parking Authority Law, 53 Pa. C.S. § 5501 *et seq.*, applicable sections of Commonwealth Procurement Code 62 Pa. C.S. § 101 *et seq.* or other controlling laws (collectively “Procurement Statutes”), the Procurement Statutes will prevail.

(c) This policy does not establish a binding norm nor have or purport to have the force of law. A procurement or resulting contract shall not be invalidated for failing to strictly adhere to this policy, provided the procurement or contract otherwise complies with applicable Procurement Statutes.

(d) Forms referenced in this policy will be available on the Authority’s website at www.philapark.org and may be amended by the Executive Director as necessary to better implement this policy.

§ 102. Procurement generally.

(a) The Authority will procure supplies, services, and construction (collectively “Products”) pursuant to this policy through either the Procurement Department or the Contract Administrator, as directed by this policy.

(b) The primary factor used to determine whether the Procurement Department or the Contract Administrator will procure Products is cost.

(c) Nothing in this policy should be interpreted to reduce the retention period for any record as required by law or the Authority’s Record Retention Policy.

§ 103. Ethics.

(a) The Authority anticipates that its employees will participate in the procurement of Products in a transparent and ethical manner. Every dollar expended by the Authority to acquire Products is public money and carries with it a heightened duty to exercise good judgement intended only to benefit the interest of the Authority pursuant to the requirements of law and this policy.

(b) All Authority employees regularly engaged in the procurement of Products will receive training focused on the Pennsylvania Public Official and Employee Ethics Act, 65 Pa.C.S. § 1101 *et seq.* (“Ethics Act”).

(c) All Authority employees regularly engaged in the procurement of Products will file a Statement of Financial Interests as required by Section 1104 of the Ethics Act and Section 8 of the Authority’s Conflict of Interest Policy. The Authority’s Conflict of Interest Policy will be reissued to each evaluation committee member upon formation of the committee.

§ 104. Noncollusion and Bid-Rigging Prohibited.

(a) It is unlawful for any person to conspire, collude, or combine with another in order to commit or attempt to commit bid-rigging. Unlawful bid-rigging includes (this section applies equally to proposals):

- (1) Agreeing to sell items or services at the same price.
- (2) Agreeing to submit identical bids.
- (3) Agreeing to rotate bids.
- (4) Agreeing to share profits with a contractor who does not submit the low bid.
- (5) Submitting prearranged bids, agreed-upon higher or lower bids or other complementary bids.
- (6) Agreeing to set up territories to restrict competition.
- (7) Agreeing not to submit bids.

(b) It is not unlawful for the same person to simultaneously submit bids for the same work or a portion thereof, as a proposed prime contractor and subcontractor.

(c) All IFBs and RFPs shall include the requirement for bidders and offerors to provide a noncollusion affidavit with their bids/proposals. The noncollusion affidavit should state whether or not the person has been convicted or found liable for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to bidding on any public contract within the last three years. The noncollusion affidavit should provide that the person’s statement on the affidavit that he has been convicted or found liable for any act prohibited by federal or state law in any jurisdiction involving conspiracy or collusion with respect to proposing or bidding on any public contract within the last three years does not prohibit the Authority from accepting a bid from or awarding a contract to that person but it may be grounds for:

- (1) Rejection of the bid/proposal on the basis of lack of responsibility; and/or
- (2) Suspension or debarment.

(d) If an Authority employee suspects that a bidder or offeror may have engaged in bid-rigging or collusion activity, the employee should refer the matter to the Authority’s Office of General Counsel (“Legal Department”) and the Authority’s Executive Director. If, upon review by either the Executive Director or Legal Department, it is reasonably believed that the facts presented indicate acts of collusion or bid rigging, the matter will be forwarded to the Pennsylvania Office of Attorney General.

§ 105. Reporting of Unethical Activity.

(a) Any Authority employee who believes that unethical (or illegal) conduct has occurred in regard to the procurement of Products should report that conduct immediately.

(b) Reports of unethical (or illegal) conduct should be made to the first level of supervision not believed to be a part of the report. (For example, if an employee believes that his or her supervisor is acting in an unethical manner, the report should be made to the next level of management above that supervisor.)

(c) Reports of unethical (or illegal) conduct may also be made directly to the Human Resources Department, the Legal Department or the Executive Director.

§ 106. Definitions.

The following words and terms, when used in this policy, have the following meanings, unless the context clearly indicates otherwise:

Advertised Procurement —Any procurement anticipated to be in excess of the Advertising Threshold necessitating public notice and invitation for public participation (bids, proposals, etc.). This term does not include a procurement that is completed pursuant to an existing Authority contract, a statewide requirements contract or cooperative purchasing agreement, as provided in Section 202 (a)(1)(i) – (iii).

Advertising Threshold —The dollar figure determined each year by the Pennsylvania Department of Labor and Industry as provided in 53 Pa. C.S. § 5511(c.1) at or above which a procurement should be an Advertised Procurement.

Bid-Rigging— The concerted activity of two or more persons to determine in advance the winning bidder or offeror of an Authority Advertised Procurement.

Core Director —An Authority employee at the level of Director, but identified by the Executive Director as holding a position of additional responsibility and rank. The Human Resources Department will maintain a list of Core Directors.

Cost —The total amount paid by the Authority as required by any procurement, including a procurement that involves the provision of Products over a period of years. (For example, the cost of a contract to purchase tires over a period of three years will be the total amount paid over those three years, not the amount paid in a single calendar or fiscal year.)

Evaluation committee —The individuals appointed to review and recommend selection of successful bidders or offerors as generally provided in Section 304.

Invitation for bids or “IFB” —All documents, including those either attached or incorporated by reference, used for soliciting bids.

Product(s) —When capitalized this term shall include any supply, service or construction requested for procurement.

Quote Threshold — The dollar figure determined each year by the Pennsylvania Department of Labor and Industry as provided in 53 Pa. C.S. § 5511(c.1) at or above which a procurement may proceed after seeking three quotes.

Request for proposals or “RFP” —All documents, including those either attached or incorporated by reference, used for soliciting proposals.

Requesting Director —The employee at the level of Director or above who approves the purchase requisition of a subordinate employee.

CHAPTER 2. PROCUREMENT DEPARTMENT

§ 201. Generally.

(a) Except as specifically provided in this policy, all procurement by the Authority will be initiated through the Procurement Department, which will be continually maintained, trained and sufficiently staffed by the Executive Director.

(b) All requests for Products must first be filed with the Procurement Department by completing Form AP-1 “Purchase Requisition”. The Executive Director may institute an electronic Purchase Requisition process consistent with this policy.

(c) In order for the Procurement Department to process a Purchase Requisition it must be completed in full and be signed by the requesting employee and a Requesting Director. Noncompliant Purchase Requisition forms **will be returned** to the Requesting Director.

§ 202. Purchase Requisition processing.

(a) The Procurement Department will process a Purchase Requisition seeking a Product that will cost **less** than the Advertising Threshold as follows:

(1) Existing contracts. The Procurement Department will first determine if the Product may be provided through an existing Authority contract. The Procurement Department shall request written confirmation of the availability of this option from the Legal Department.

(2) In the event the Product is not available through an existing Authority contract, the Procurement Department will seek to procure the Product through one of the following sources, if available:

(i) Through a Pennsylvania Department of General Services statewide requirements contract that is already in place. (For example: the DGS COSTARS program.)

(ii) The Product may be provided through a cooperative purchasing agreement established by other states, local governments (For example, a contract secured by the City of Philadelphia and made available to the Authority), the federal government, including General Services Administration schedule contracts or other external purchasing agency or local public procurement unit authorized pursuant to Procurement Statutes

(iii) If a Product is available through a cooperative purchasing contract authorized through paragraph (2), but the Procurement Department or the Requesting Director reasonably believes that the Product is not an appropriate match or that the Product may be obtained at better terms through other procedures identified in this policy, the justification for that determination must be provided in writing.

(3) Three Quotations.

(i) In the event the requested Product cannot be provided pursuant to subsection (a), or an accepted justification to seek alternative options has been provided, the Procurement Department will obtain price quotations from at least three qualified and responsible contractors.

(ii) In lieu of three price quotations, a memorandum from the Director of the Procurement Department shall be provided to the Requesting Director showing that fewer than three qualified contractors exist in the area within which it is practicable to obtain quotations. The memorandum shall be maintained as part of the Procurement Department file.

(iii) A written record of price quotations received by telephone shall be made and shall contain at least the following information:

(A) The date of the quotation.

(B) The name of the contractor and the contractor's representative.

(C) The Product that was the subject of the quotation.

(D) The price.

(b) The Procurement Department will process a Purchase Requisition seeking a Product that will cost **more** than the Advertising Threshold when the Product is available through an existing contract as provided in subsection (a)(1) and written justification to pursue an Advertised Procurement has not been filed with the Procurement Department.

(c) The Procurement Department will return the Purchase Requisition to the Requesting Director along with a written response detailing the available means of procuring the Product. The price of the Product and its source shall be identified. If quotes were obtained, each quote will be identified. If a memorandum is required by subsection (a)(2)(ii), it shall be attached to the Procurement Department's Response.

(d) In the event the Requesting Director determines to move forward with the procurement after reviewing the Procurement Department's response, the procurement shall be approved, in writing, as follows:

(1) When the Product will cost less than \$5,000, the Requesting Director may issue the approval.

(2) When the Product will cost between \$5,000 and the Quote Threshold the purchase must be approved by a Core Director or the supervisor of the Requesting Director, whichever is more senior.

(3) When the Product will cost more than the Quote Threshold the approval must be issued by the Executive Director.

(4) When the Product will cost more than the Advertising Threshold and will be obtained through an option identified in subsection (a), the approval must be issued in the form of an award by the Board at a public meeting.

(e) A procurement that will cost more than the Advertising Threshold shall be completed through a contract drafted or approved by the Legal Department as provided in Section 306.

(f) In the event the Product must be obtained through an Advertised Procurement, that process shall be facilitated by the Contract Administrator as provided in Chapter 3.

§ 206. Qualified and responsible contractors.

It is the policy of the Authority to encourage competition among contractors solicited for price quotations. In order to facilitate that competition, the Executive Director will cause the Procurement Department to continually seek new contractors for inclusion in the price quotation process.

§ 207. Reserved.

§ 208. Printing services, generally.

(a) A contractor selected to provide printing services to the Authority must own or lessee the equipment or machinery that will produce the printed Product when ordered by the Authority.

(b) Except as provided in subsection (c), a contractor selected to provide printing services to the Authority must provide a sworn statement confirming that it does pay prevailing wages to employees engaged in the performance of the contract and that it will provide employee working conditions prevalent in the locality in which the contract is being performed. *See* 71 P. S. § 1654.

(c) A contractor selected to provide printing services to the Authority can provide an affidavit that a collective bargaining agreement is in effect between the selected contractor and its employees and that the employees are represented by a responsible organization which is not influenced or controlled by management. The selected contractor must also agree to maintain the conditions described in the sworn statement in the performance of the contract.

CHAPTER 3. CONTRACT ADMINISTRATOR

§ 301. Generally.

(a) An Advertised Procurement will be processed through the Contract Administrator pursuant to this policy. The Contract Administrator position shall be continually maintained, trained and sufficiently supported by the Executive Director.

(b) The Contract Administrator will assist Authority staff in securing Products through an Advertised Procurement (For example, IFBs or RFPs) as provided in this policy.

§ 302. Starting the Advertised Procurement process.

(a) An Advertised Procurement may be initiated by filing a completed Form AP-2 “Advertised Procurement Request” with the Contract Administrator.

(b) The completed AP- 2 shall have attached to it one of the following:

(1) The AP-1 and the Procurement Department’s response indicating an expected value equal to or greater than the Advertising Threshold; or

(2) The written opinion from the Authority’s Director of Engineering and Design, with the concurrence of the Executive Director, that a construction procurement is anticipated to cost in excess of the Advertising Threshold. The Executive Director may reject the Engineering and Design opinion and direct that the procurement begin as provided in Section 202.

(c) The AP-2 must be signed by both the:

(1) The Requesting Director.

(2) The supervising Deputy Executive Director or the Executive Director.

(d) The Contract Administrator shall assign a number to the Advertised Procurement indicating the method of procurement and the procurement number, including the year and the sequential number assigned to the procurement and a simple title. (For example, the tenth overall Advertised Procurement of 2017 that will be an RFP seeking accounting services should be “RFP No. 17-10 ‘Accounting Services’”.)

§ 303. Duties of Contract Administrator.

(a) Upon receipt of a duly completed Form AP-2, the Contract Administrator will create a file and maintain documentation created pursuant to this policy and applicable law, including the following:

- (1) Notes from every meeting held detailing events of the meeting.
- (2) Sign-in sheet used for all solicitation openings and evaluation meetings.
- (3) Documentation of the entire evaluation and selection process.
- (4) A log documenting the time and date all bids or proposals are received.
- (5) The RFP or IFB or other documentation used to solicit the Advertised Procurement and any addenda.
- (6) All bids, proposals or other forms of response to an Advertised Procurement.
- (7) Copies of all questions and answers exchanged during the Advertised Procurement.
- (8) Any bid or performance bonds.

(b) The Contract Administrator shall maintain a defined checklist of documents for archiving that must be included in each procurement file by using Form AP-3 "Procurement File Checklist".

(c) The Contract Administrator shall submit a Form AP-6 "K-Form" to the Legal Department for legal assistance and production of a draft contract as provided in Section 306.

(d) The Contract Administrator shall submit a request for contractor insurance requirements to the Authority's insurance broker, which shall be included in the IFB or RFP documents.

(e) The Contract Administrator shall also perform the following duties:

- (1) Submit a Form AP-1 to the Procurement Department requesting the services of a court reporter for the pre-bid or pre-proposal meeting, if necessary.
- (2) Act as the sole point of contact for questions or other communication about IFBs and RFPs.
- (3) Conduct any pre-bid and pre-proposal conferences.
- (4) Request clarification of bids and proposals from bidders and offerors, when directed by the evaluation committee chair, as determined necessary to ensure responsiveness or clarity of bids and proposals.

(5) Collect all scores and assist with the calculation of total scores (including cost scores) for each bid or proposal.

(f) Perform such other administrative duties as identified in this policy and as directed by the evaluation committee chair and Executive Director.

§ 304. Creation of evaluation committee.

(a) The supervising Deputy Executive Director or, if unavailable, the Executive Director must designate the evaluation committee to review the Advertised Procurement process, along with the evaluation committee chair. The designation shall be in writing and delivered to the Contract Administrator for inclusion in the procurement file.

(b) The evaluation committee should be composed of a minimum of three (five or seven is recommended) Authority employees who possess technical and managerial expertise in the appropriate field. The Contract Administrator shall serve as a non-voting member of the committee, if the committee will vote.

(c) Individuals from other government units or agencies who possess expertise in a relevant field may be appointed to the evaluation committee by the Executive Director as a voting or non-voting member as provided in subsection (a).

(d) A member of the Authority's Finance Department should be appointed to the evaluation committee and may participate as a voting or non-voting member.

(e) Each evaluation committee member, including the Contract Administrator must execute Form AP-4 "Evaluation Committee Certification of Confidentiality and No Conflict of Interest" prior to taking any action as a committee member.

(f) The signed AP-4 forms shall be reviewed as follows:

(1) The Contract Administrator will review and report any conflict or problem, in writing, to the evaluation committee chair and the Deputy Executive Director who formed the evaluation committee. The Deputy Executive Director will further review the issue.

(2) The evaluation committee chair shall review and report any conflict or problem related to the Contract Administrator. This report will be made in writing to the Deputy Executive Director who formed the evaluation committee. The Deputy Executive Director will further review the issue.

(3) A person named to an evaluation committee has a duty to self-report any conflict and remove themselves from further participation. The person who created the evaluation committee as provided in subsection (a) will remove and replace any person believed to have a conflict.

(Note: The Authority's Conflict of Interest Policy requires that each members of the evaluation committee be provided a new copy of that policy upon being named to the committee. The Contract Administrator may complete this task electronically.)

(4) Questions or concerns related to evaluation committee formation or member eligibility may be directed to the Legal Department.

(g) Once appointed to the committee, no committee member, whether voting or non-voting, may meet or discuss the Advertised Procurement or related matters with offerors or other committee members except in formal, scheduled meetings of the committee or as the evaluation committee chair may direct and arrange. *(Note: Authority attorneys who serve as voting members on evaluation committees may lose the right to invoke the attorney-client privilege.)*

§ 305. Reserved.

§ 306. Legal Department participation.

(a) The Contract Administrator will notify the Legal Department of the Advertised Procurement and request a draft contract by filing a Form AP-6.

(b) The General Counsel will assign an attorney to each Advertised Procurement.

(c) The attorney assigned to create the draft contract will not serve as a member of the evaluation committee, but shall provide general legal advice to its members.

(d) The Legal Department will assign a number indicating the year and the sequential number of each contract that it drafts or otherwise approves and affix a signed confirmation that the contract is approved as to form.

(e) Upon publication of the procurement notice the IFB or RFP should include a draft contract approved by the Legal Department. The instructions must direct all bidders or offerors to clearly provide exceptions to the draft contract in the bid or proposal or to note that no exceptions are made. The IFB or RFP may preclude exceptions.

(f) A procurement at or above the Advertising Threshold shall be completed through a written contract created or approved by the Legal Department.

§ 307. Method of advertisement.

(a) The Contract Administrator will provide notice of the Advertised Procurement through a notice published at least ten (10) days before the award of a contract in a newspaper of general circulation in Philadelphia. The Contract Administrator should attempt to schedule the procurement to permit at least thirty days to respond.

(b) For purposes of this policy, a "newspaper of general circulation" shall mean a newspaper issued daily, or not less than once a week, intended for general distribution and circulation, and sold at fixed prices per copy per week, per month, or per annum, to subscribers and readers without regard to business, trade, profession or class. *See 45 Pa. C.S. § 101.*

(c) In order to reduce costs, the notice may be as concise as practicable and direct interested parties to the Authority's Internet website at www.philapark.org, under "Bids and Solicitations"

for full information and to download all necessary procurement documents, when available through the website. The newspaper notice shall include the bid or request name and number and the date the bid documents will be available. In some cases it may be necessary for a potential bidder of offeror to obtain a copy of the procurement documents from the Authority's Headquarters at 701 Market Street in Philadelphia, or another designated location.

(d) The notice of Advertised Procurement posted on the Authority's Internet website shall include the following (if applicable):

- (1) The pre-bid or pre-proposal date and time.
- (2) The cost of the documents.
- (3) Location (and hours) where documents may be obtained by the public, including when the documents will be available on the Authority's Internet website.
- (4) Deadlines for questions related to the procurement, including the date and time.

(e) In addition to the foregoing, the Contract Administrator may also provide notice of an Advertised Procurement as follows:

- (1) Through electronic publication which is accessible to the general public.
- (2) Through Advertisement as provided for in 45 Pa. C.S. § 306.
- (3) Through email notification of contractors on the Authority's solicitation mailing list.

CHAPTER 4. COMPETITIVE SEALED BIDDING

§ 401. Generally.

(a) Competitive sealed bidding is the traditional and usual method of contractor selection through an Advertised Procurement. It is normally used when the Product can be satisfactorily described and price is the only factor to be considered in the award, after bidder responsibility is determined.

(b) Contracts must, as a general practice, be awarded through the competitive sealed bidding method of award.

(c) There is limited discretion in the bid award process. Discretion is limited to:

- (1) Determining bidder responsibility.
- (2) Determining whether the bid is responsive.

(3) Rejection of all bids.

(4) Seeking a reduced price from the determined lowest responsible bidder.

§ 402. Invitations for Bids.

(a) Bids will be solicited through publication of an invitation for bids (“IFB”) by the Contract Administrator.

(b) The IFB must include:

(1) A procurement description.

(2) Criteria to determine acceptability, including instructions and information for bidders.

(3) Evaluation criteria.

(4) All contractual terms (whenever practical) and conditions applicable to the procurement (For example, delivery or performance schedules, warranty, bonding, and security requirements.)

(5) Signature page identifying the bidders’ principal and confirming the veracity of the bid.

(c) The procurement description is the words used in the IFB to describe the supplies, services, or construction to be procured. The term includes the specifications. (The specifications must be attached to or made a part of the IFB.)

(d) The criteria to determine acceptability may include: inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

(e) Evaluation criteria that will affect the price and be considered in the evaluation for the award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

(1) No criteria may be used in the bid evaluation that is not set forth in the IFB.

(2) Life cycle cost is the total cost of the supply in terms of purchase price, installation costs, maintenance costs, energy costs, material cost, and other costs.

(3) Bidding preferences, such as the preference for small and diverse businesses, are evaluation criteria.

(f) The IFB is intended to establish the common standard upon which all bidders must submit their bids.

(g) IFB’s will be advertised as provided in Section 307.

§ 403. Bid Opening.

- (a) Bids must be opened publicly and read aloud at the time and place designated in the IFB.
- (b) The Contract Administrator must record and make available for public inspection, the following information.
 - (1) The name of each bidder.
 - (2) The amount of each bid.
 - (3) Any other relevant information required by this policy.
- (c) The prepared written record of the bidders and bid information (bid tabulation) must be posted to the Authority's Internet website as soon as reasonably possible.

§ 404. Bid Acceptance and Evaluation.

- (a) Any bid received after the time and date set for bid opening is late and shall not be considered for award unless the bid would have been timely but for the action or inaction of Authority employees directly serving the procurement activity.
- (b) Bids must be unconditionally accepted without alteration or modification except as authorized by law, the IFB or this policy.
- (c) Bids must be evaluated based upon the requirements set forth in the IFB. The evaluation committee chair will review each bid with the assistance of the evaluation committee.
 - (1) The acceptability of bids will be based upon the acceptability criteria in the IFB. (The acceptability evaluation is not documented for the purpose of determining whether one bidder's item is superior to another, but only to determine that a bid is acceptable as set forth in the IFB.)
 - (2) The bids must be evaluated in accordance with the evaluation criteria which may affect bid prices and the order of award (For example, lifecycle cost, delivery terms, etc.).
- (d) In order to be acceptable, a bid must be responsive, that is, it must conform in all material respects to the requirements in the IFB.
 - (1) A slight or immaterial variance from the terms and conditions or the specifications contained in the IFB does not destroy the competitive character of the bid so as to require rejection. Those errors which superficially deviate from normal practice do not taint an otherwise acceptable award if the discrepancy does not transgress the actual terms of the bid instructions.
 - (2) The IFB should reserve the right of the Authority to waive technical defects or informalities. (The evaluation committee chair shall determine whether the waiver of any defects will cause the competitive bidding process to be noncompetitive, in which case waiver may not occur.)

(3) Except as provided in Section 407 (c), post-bid negotiations are prohibited.

(e) Once a bid is opened, it cannot be modified. (A bidder cannot modify its bid by removing exceptions to the bid instructions or by supplying missing documentation required by the bid instructions.)

(f) Once a bid is determined to be nonresponsive, it may not be made responsive after bid opening notwithstanding the reason for the failure to conform. Responsiveness of a bid is determined as of bid opening time and must be determined from the bid itself not evidence outside of the bid documents.

§ 405. Resolving Tie Bids.

(a) In the event two or more responsive and responsible bidders have bid the exact same amount (as may be defined in the solicitation) for a line item (if the award is being made by line item) or for the entire bid (if the award is being made for all line items), the evaluation committee chair must break the tie.

(b) Unless the IFB provides for a special process to break a tie bid, the evaluation committee chair shall notify the affected bidders of the tie and request a voluntary discount from them to be due at a specified date and time. If this does not resolve the tie or is not practical, the evaluation committee chair may consider any or a combination of the following factors in order to break the tie:

(1) One of the bidders is a Department of General Services Certified Small Business.

(2) One of the bidders is a Pennsylvania bidder or a Pennsylvania manufacturer.

(3) One of the bidders is offering a more advantageous delivery date.

(4) One of the bidders' products has a greater recycled content.

(5) The bidders' past performance with the Authority.

(6) Awarding to one of the bidders would equalize the awards resulting from the bid.

(7) Awarding to one of the bidders would create an administrative advantage as the bidder will also be awarded other line items.

(8) One of the bidders has made no exceptions to the Authority's draft contract or insurance requirements included in the IFB.

(c) If none of the above options are practical or do not result in breaking the tie, the evaluation committee chair may utilize a coin flip to resolve the tie. If this method is to be used, the evaluation committee chair must notify the affected bidders no less than 48 hours prior to the

coin flip to allow for the bidders or their designees to be present, if they so choose, to witness the coin flip. In addition, any coin flip will be open to the public. The bidder having first delivered its bid to the Authority's offices as required by the IFB may call the coin side. The coin side shall be identified before the coin is flipped. The coin will be a quarter minted by the United States of America.

(d) The evaluation committee chair shall, with the assistance of the Contract Administrator, document all steps taken to resolve the tie and include them in the contract file.

§ 406. Reserved.

§ 407. Award.

(a) The bid award must be made within 60 days after bid opening. Extensions of the date for the award may be made by mutual written consent of the evaluation committee chair and the lowest responsible and responsive bidder.

(b) The bid award must be made to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids, unless all bids are rejected or the lowest responsible and responsive bidder is allowed to withdraw his or her bid.

(1) A "responsible bidder" is a person who has submitted a responsive bid and possesses the capability to perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

(2) A "responsive bidder" is a person who has submitted a bid or proposal which conforms in all material respects to the IFB.

(3) "Lowest" is generally determined by price but can be defined by the evaluation criteria set forth in the IFB.

(c) The evaluation committee chair may solicit a voluntary discount from the "lowest" responsible bidder only in an effort to obtain a lower price. If the bidder refuses to give a voluntary discount, this does not provide the evaluation committee chair with grounds to reject the bid or to contact any other bidders and seek a voluntary discount. However, the Authority will always reserve the right to reject all bids or offers and discontinue the procurement in the IFB, in its own discretion.

(d) Within 30 days of the bid opening, bid security, if required, must be returned to all but the lowest and next to lowest bidders then under consideration for contract award.

(e) Once the evaluation committee chair has determined the lowest responsible and responsive bidder, a contract shall be finalized by the Legal Department. The purpose of including a draft contract in the IFB is to eliminate or greatly minimize the need for post-determination contract negotiation.

(f) A contract in an amount in excess of the Advertising Threshold may only be awarded by the Authority's Board at a public meeting. The Executive Director may opt to request the Board's approval of an award under the Advertising Threshold. Any contract that is properly awarded without the Board's approval will not be binding against the Authority unless first executed by the Executive Director.

§ 408. Special Circumstances.

(a) In the event the Authority terminates a contract and the termination is within a reasonable time, but in no case greater than one year, of the receipt of bids and the next lowest responsible bidder is willing to enter into a contract at the bid price the next lowest responsible bidder originally submitted, no rebidding is necessary.

(b) The Executive Director must approve the selection of the new contractor. The contract shall be completed and awarded as required by this policy and applicable law.

CHAPTER 5. COMPETITIVE SEALED PROPOSALS

§ 501. Request for proposal process (RFP).

(a) The Authority may use the competitive sealed proposal (RFP) process: when the Deputy Executive Director assigned to supervise the requesting department or the Executive Director determines that the use of an IFB is either not practicable or advantageous to the Authority. The determination shall be memorialized through the completion of Form AP-2 or a substantially similar writing, which shall be delivered to and maintained by the Contract Administrator as part of the procurement file.

(b) "Practicable" denotes what may be accomplished or put into practical application. It is not practicable to use an IFB when the Authority:

(1) Is seeking a contractor's solution to an Authority need.

(2) Wants to give the offerors flexibility in the contents of their proposals in terms of the materials, services, or construction offered.

(3) Has difficulty preparing a detailed procurement description.

(c) "Advantageous" connotes a judgmental assessment of what is in the Authority's best interest. Key elements in determining advantageousness are the desire to consider criteria other than price in the award process and, in particular, criteria that are subjective in nature.

§ 502. Evaluation Committee Responsibilities.

(a) The evaluation committee is created to review the responsiveness, technical merit and true cost of proposals using the scoring sheets that will be provided by the Contract Administrator.

The evaluation committee may also assist in the development of RFP documents and other portions of the procurement process as permitted by law and this policy.

(b) If clarification of proposals is needed, the Contract Administrator will request clarification from offerors as needed and with the approval of the evaluation committee chair.

(c) The members of the evaluation committee must keep the proposals confidential, disclosing or discussing the information with no one (including other Authority employees) except the following:

(1) The Legal Department when seeking legal advice.

(2) The Finance Department regarding a financial qualification issue.

(3) When meeting with the evaluation committee.

§ 503. Reserved.

§ 504. Solicitation Document.

(a) The Contract Administrator shall develop and maintain a default form of RFP consistent with law and this policy.

(b) The RFP establishes the common standard that ensures fair and just competition among qualified offerors. RFPs should provide offerors with all information needed to prepare proposals that meet the Authority's needs. The Authority should not disclose the amount of money available for the contract.

(c) The RFP consists of all documents, including those either attached or incorporated by reference, used to solicit proposals. An RFP, including all drafts, is confidential until public notice has been given.

(d) An RFP should generally follow the following format and may include additional documents as deemed necessary by the evaluation committee chair and Contract Administrator:

(1) **Part I, General Information for the Offeror.** This part is used to inform offerors of the general conditions under which the RFP is issued. It should include a general description of the needed material, service or construction; the date of any pre-proposal conferences; the proposal response date; and information on the Authority's commitment to small diverse businesses.

(2) **Part II, Information Required from Offerors.** This part provides instructions on the format and nature of the information that offerors must provide in the proposal, including information on small diverse business participation.

(3) **Part III, Criteria for Selection.** This part states the factors, including technical, cost, and small diverse business participation, used to evaluate proposals. It establishes the relative

importance of the selection criteria. A fair competition requires that all offerors understand the basis upon which the Authority will make its selection. Only those factors or criteria stated in this Part shall be used to evaluate proposals. The weighting of the criteria must be fixed prior to opening the proposals.

(4) Part IV, Work Statement. This part is the most important portion of the RFP. Generally, the more precise and complete this part of the RFP is, the greater the probability of receiving proposals that meet the needs of the Authority. Part IV should provide a detailed description of the needed materials, services, or construction. The Work Statement may include the objectives to be achieved; parameters of measurement; reporting requirements; and segmentation of the work into specific tasks.

(5) Part V, Contract Terms and Conditions. This part should include a proposed form of contract, applicable insurance requirements and other terms and conditions valued by the Authority in a contract governing the provision of the materials, services, or construction.

§ 505. Questions.

(a) A potential offeror must submit questions regarding an RFP in accordance with the requirements noted in the RFP, including as to the due date and time. Questions may only be submitted to the Contract Administrator.

(b) A potential offeror who submits a question after the deadline date assumes the risk that its proposal will not be responsive or competitive because the Authority may decline to respond.

(c) The Contract Administrator must publish responses to timely filed questions of offerors no later than five business days prior to the proposal receipt date. These answers constitute a formal amendment to the RFP.

(d) Regardless of when a response to a potential offeror's questions are provided, the Contract Administrator will communicate the responses to all potential offerors through an addendum to the RFP.

§ 506. Pre-proposal Conference.

(a) If RFP provides for a pre-proposal conference, the Contract Administrator will use the opportunity to:

(1) Explain the background of the RFP to offerors who intend to submit a proposal.

(2) Emphasize portions of the RFP considered especially important.

(3) Invite potential offerors to ask additional questions during the pre-proposal conference. Questions need not be in writing if the pre-proposal conference is transcribed, but otherwise should be.

(b) The pre-proposal conference should be scheduled one to three weeks after the RFP has been issued. The potential offerors should be given a reasonable opportunity to review the RFP prior to the pre-proposal conference.

(c) The Contract Administrator will normally arrange and conduct the pre-proposal conference. The introductory portion of the conference should be prepared in advance, not improvised. Throughout the pre-proposal conference, special care should be exercised not to alter any of the RFP provisions or to give the potential offerors information which should remain confidential, including the amount of money available for the contract.

§ 507. Reserved.

§ 508. Receipt of Proposals.

(a) Offerors must submit their proposals to ensure receipt by the Contract Administrator prior to the delivery deadline established in the RFP (date and time).

(b) Proposals must be submitted to the Contract Administrator in the format and in the manner specified in the RFP.

(c) The Contract Administrator shall record the receipt of proposals as they are received.

(d) There is no public opening of proposals. The Contract Administrator shall open the proposals in the presence of the evaluation committee after the date and time set in the RFP for delivery.

(e) The evaluation committee will keep the contents of the proposals confidential to avoid disclosure of their contents to competing offerors or anyone else who has not signed a confidentiality statement.

(f) The evaluation committee will initially review the proposals for responsiveness with the assistance of the Legal Department, if necessary.

(g) If an offeror is determined not to be responsible, then the offeror's proposal shall be rejected. The reasons for the determination will be maintained by the Contract Administrator in the contract file and provided to the offeror upon request.

(h) If the Authority receives only one proposal it may accept the proposal for recommendation to the Board after full evaluation as provided in this policy. The Authority may engage in contract negotiations with the proposer as provided in Section 517 to arrive at final terms or cancel the RFP. A sole source request is not necessary when only one proposal is received.

§ 509. Initial review of proposals, mandatory requirements.

(a) The evaluation committee must first determine whether the proposal meets the mandatory RFP requirements. No value judgment is made at this step in the evaluation.

(b) If a proposal does not meet one or more RFP requirement that has been designated as “mandatory” the proposal must be rejected. Generally, there are at least two “mandatory” requirements:

(1) The proposal must be timely submitted; and

(2) The proposal must be signed by the offeror.

(c) The RFP may include other mandatory requirements as necessary to advance the procurement process in the best interests of the Authority.

(d) If a proposal does not meet an RFP term that is not labeled as “mandatory,” it should be evaluated pursuant to Section 510 only if the evaluation committee determines, after consulting with legal counsel, that the deficiency is a technical, waivable defect. If the variance gives the offeror a competitive advantage over other offerors or has an adverse effect on what is or will be received by the Authority, the deviation is material and the proposal must be rejected.

(e) The offeror should be informed immediately if the Authority determines that a proposal must be rejected. The Authority shall document all reasons for the rejection of a proposal so the evaluation committee chair and Contract Administrator, if requested, can debrief the offeror.

(f) The successful offeror should be the one who scores the highest in consideration of the established criteria and who can come to terms acceptable to the Authority. The following definitions shall apply:

(1) A "responsible offeror" is a person who has submitted a responsive proposal and possesses the capability to perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

(2) A "responsive offeror" is a person who has submitted a proposal which conforms in all material respects to the RFP.

(3) "Lowest" is generally determined by price but can be defined by the evaluation criteria set forth in the RFP.

§ 510. Preliminary evaluation of proposals.

(a) The evaluation committee must score and rank the responsive technical submittals in each responsive proposal based on the criteria listed in the RFP.

(b) All members of the evaluation committee must use the uniform scoring sheet provided by the Contract Administrator.

(c) The Contract Administrator will confirm any assertion of small and diverse business status.

(d) If financial capability is a part of an RFP evaluation, the Contract Administrator will request review by the Authority's Finance Department. Unless provided for otherwise in the RFP, the financial analysis will include a review of the entity's previous three financial statements, calculating and analyzing various financial ratios, and comparing the information against industry standards and trends. A written recommendation will be provided by the Finance Department to assist the evaluation committee in determining if the offeror should be included or excluded from the procurement process. The recommendation will be included in the contract file.

§ 511. Discussions for Clarification.

(a) The evaluation committee may ask the Contract Administrator to seek clarification from an offeror to assure full understanding of and responsiveness to the RFP. Requests for clarification generally occur during the evaluation committee's preliminary evaluation but may occur any time prior to contract execution.

(b) The offeror may not materially alter or add to its proposal after the opening; any changes must be in the nature of clarifications. The Contract Administrator, on behalf of the evaluation committee, shall make all contacts with the offeror. Each offeror contacted for clarification purposes will be requested to respond in writing, making reference to specific paragraphs or sections of its proposal needing clarification.

§ 512. Reserved.

§ 513. Cost evaluation.

It is important for the evaluation committee to ultimately review each proposal with an understanding of cost based on any alternatives or fractured pricing methods submitted by each offeror. The Contract Administrator will record, in order of lowest to highest, the cost submittals that meet the RFP requirements.

§ 514. Best and final offer phase, generally.

(a) If provided for in the RFP, the Contract Administrator and the evaluation committee may conduct discussions and negotiations with offerors for the purpose of obtaining best and final offers.

(b) Offerors may not be invited to participate in the Best and Final Offers process in the following circumstances:

(1) The proposal has been determined to be nonresponsive or not responsible, as provided in this policy.

(2) The submitted or gathered financial and other information of the offeror demonstrates that the offeror does not possess the financial and technical capability, experience and qualifications to assure good faith performance of the contract, in the opinion of the evaluation committee.

(c) The evaluation committee may further limit participation in the best and final offers process to those remaining responsible offerors which the evaluation committee has, within its discretion, determined to be reasonably susceptible of selection.

(d) The evaluation committee, through the Contract Administrator, may give offerors the opportunity to revise designated technical, cost or small diverse business participation submittals or two of the three submittals or all of their submittals at this stage of the procurement.

(e) It is imperative that offerors selected to submit a best and final offer be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

§ 515. Best and final offer, procedure.

(a) The Contract Administrator will inform only to those offerors deemed eligible to participate in the best and final offer process using the criteria above, by letter. The letter will invite eligible offerors to improve one or more of their proposal's technical submittal, cost submittal or small diverse business participation submittal.

(b) To obtain best and final offers, the evaluation committee, through the Contract Administrator, may do one or more of the following, in any combination and order:

(1) Request written information that revises the original submittals.

(2) Schedule oral presentations.

(3) Conduct a reverse online auction.

(4) Enter into preselection negotiations.

(c) If the evaluation committee, through the Contract Administrator, conducts a reverse online auction to receive best and final cost proposals, the names of the offerors may not be disclosed during the auction.

§ 516. Optional pre-selection negotiations.

(a) Pre-selection negotiations may be considered if, after an initial best and final offer round, two or more offerors remain sufficiently close in total points. This condition requires a re-scoring of the specific areas of the technical submittals that were modified as part of the best and final offer.

(b) The evaluation committee will designate an Authority employee to conduct the pre-selection negotiations, which will also include the Contract Administrator. Evaluation committee members should be available to assist the negotiators.

(c) The contents of other proposals should not be disclosed during the negotiations or at any time during the best and final offers phase.

(d) Where appropriate, the offeror should be given an explanation of the Authority's reason for any requested change, especially when the offeror appears reluctant to accept the change (though the Authority should not expect an offeror to accept the Authority's position on all issues).

(e) At the conclusion of pre-selection negotiations, the Authority should ask the offeror to confirm its revised offers, in writing, in the form of a revised proposal.

(f) The evaluation committee will review any revised technical and cost submittals and assign final technical scores based on the criteria listed in the RFP.

§ 517. Final Evaluation.

(a) In the event that best and final offers were not requested from offerors, the evaluation committee will review and rank the responsible and responsive proposals according to the total overall score assigned to each, in descending order. The offeror with the highest overall score will be recommended for selection for contract negotiations.

(b) When best and final offers have been received by the Authority as provided in this policy, but a successful offeror has not been selected through pre-selection negotiations, the best and final proposals will be reviewed by the evaluation committee. The committee will rank those proposals according to the total overall score assigned to each, in descending order.

(c) The offeror with the highest overall score calculated as provided in subsections (a) or (b), as applicable, will be recommended for selection for contract negotiations, if necessary. Contract negotiations may not be necessary if the offeror has accepted all of the terms of the RFP documents, including the contract and insurance terms and conditions, in which case confirmation of that acceptance should be obtained in writing.

(d) The chair of the evaluation committee and such other Authority employees or agents deemed necessary by the chair, together with the Legal Department, will conduct contract negotiations with the recommended offeror.

(e) If the parties cannot reach a final agreement, the chair of the evaluation committee should terminate negotiations and initiate negotiations with the next highest-ranked offeror if that offeror has agreed to hold its proposal open for negotiation or as required by the RFP. However, the chair of the evaluation committee cannot move to the next highest ranked offeror solely because of a failure to negotiate a lower price with the original selected offeror, as the cost has already been factored into the overall ranking.

(f) In the event the parties cannot agree to final contract terms, the chair of the evaluation committee may direct the Contract Administrator to notify all offerors of the cancellation of the RFP and rejection of all proposals.

(g) A successful negotiation should result in a written contract executed by the offeror. The contract must include all terms and conditions of the procurement. However, the Authority will not be bound to a contract until approved by the Board at a public meeting and after the contract

is signed by the Executive Director. The intention of the negotiation process is to dispense with the need to negotiate terms of a contract after contract award.

(h) In the event a formal contract executed by the successful offeror is not available prior to Board approval of the award, as provided in Section 519, written confirmation by the offeror memorializing the final terms of the negotiated agreement should be delivered to the chair of the evaluation committee and the Executive Director.

§ 518. Reserved.

§ 519. Recommendation for award.

(a) The evaluation committee will submit its recommendation to the supervising Deputy Executive Director or the Executive Director for review along with the contract executed by the successful offeror. In the event the executed contract is not available, the successful offeror's confirmation as provided in Section 517(h) will be provided.

(b) The Executive Director will ultimately be responsible to make a recommendation to the Board and may decline to accept the recommendation and direct that the evaluation committee take additional procurement steps pursuant to law and this policy or direct the cancelation of the RFP and reject all proposals.

(c) If deemed acceptable, the Executive Director will recommend that the Authority's Board approve the contract award at a public meeting.

§ 520. Notification of Award. Upon award of the contract by the Board, the Contract Administrator will provide written notice of that award to the successful offeror. Written notice will also be provided to the other offerors, along with notice of the opportunity for a debriefing.

§ 521. Debriefing.

(a) The Contract Administrator shall schedule and conduct a requested debriefing at a mutually agreeable time. *(Note: An offeror's exercise of the opportunity to be debriefed does not constitute nor toll the time for filing a protest.)*

(b) The purpose of the debriefing is for the offeror to learn why its proposal was unsuccessful. Information given during a debriefing conference must be factual and precise. The offeror is looking for justification for its lack of success. Therefore, an offeror should be informed where its proposal failed.

(c) The debriefing should be prepared beforehand by the evaluation committee chair and reviewed with the offeror during the debriefing conference. The evaluation committee should participate in preparing debriefing information, though the evaluation committee need not be present at the debriefing conference. It is in the Authority's best interest to record all questions asked and responses given during the conference.

(d) The debriefing should not compare the offeror to any other offeror. The offeror may be advised of the ranking of the offeror's proposal in relation to the proposals submitted by other offerors for each of the three major selection criteria (technical, cost, and small diverse business participation). The debriefing may point out key differences between the successful offeror and the offeror being debriefed.

CHAPTER 6. SMALL AND DIVERSE BUSINESSES

§ 601. Purpose.

The goal of this chapter is to clarify opportunities available for growth and advancement among small and diverse businesses through contracts to provide products, services or construction to the Authority.

§ 602. Definitions.

(a) "Small Business". In order to be self-certified as a small business, a business must meet ALL of the following criteria:

- (1) It must be a United States business.
- (2) It must be independently owned.
- (3) It cannot be dominant in its field of operation.
- (4) It cannot exceed 100 full-time equivalent employees.
- (5) It must earn less than \$20,000,000 in gross annual revenues when averaged across the three most recent tax reporting periods for businesses providing procurement goods and services (\$25,000,000 for those businesses in the information technology sales or service business).
- (6) It must be a current holder of a certificate as provided in Section 603.

(b) "Small Diverse Business". A Small Diverse Business is a minority-owned business, woman-owned business, service-disabled veteran owned business or veteran-owned business that also meets all of the small business criteria above and is a current holder of a certificate as provided in Section 603.

§ 603. Certification process.

(a) A small or diverse business is one that meets the definitions provided in Section 602 and holds a current and valid certification of that status issued by DGS' Small Business Procurement Initiative ("SBPI"), which may be accessed at www.smallbusiness.pa.gov.

(b) The Authority will not certify businesses as small or diverse, but does retain the right to verify that status through investigation, including consultation with DGS. A business subject to verification will fully cooperate with the Authority's investigation.

(c) Any potential bidder who does not have a SBPI certificate as of the bid/proposal due date is ineligible for points or other considerations assignable to that status.

(d) A small or diverse business must retain this certification throughout the term of any contract with the Authority, if this factor resulted in points assigned by an evaluation committee or evaluation committee chair (when dealing with bids) under this policy.

CHAPTER 7. SOLE SOURCE AND EMERGENCY PROCUREMENT

§ 701. Sole source.

(a) A contract may be awarded for a Product without competition if the Deputy Executive Director with supervisory oversight over the relevant operation or the Executive Director first determines in writing, as provided in subsection (b), that one of the following conditions exists:

(1) Only a single contractor is capable of providing the Product.

(2) A Federal or State statute or Federal regulation exempts the Product from the competitive procedure.

(3) It is clearly not feasible to award the contract on a competitive basis.

(4) The services are to be provided by an expert witnesses.

(5) The services involve the repair, modification or calibration of equipment and they are to be performed by the manufacturer of the equipment or by the manufacturer's authorized dealer, provided the determination provides that bidding is not appropriate under the circumstances.

(6) The contract is for investment advisors or managers selected by the Authority's Board.

(7) The contract for supplies or services is in the best interest of the Authority.

(b) The written determination of the Deputy Executive Director with supervisory oversight over the relevant operation or the Executive Director authorizing sole source procurement shall be filed with the Contract Administrator and be included in the contract file, along with the following:

(1) A price quote on the contractor's letterhead which includes a description of the product or service.

(2) A copy of the completed Form AP-6 requesting a legal review.

(c) The Executive Director may deny the request for a sole source procurement.

§ 702. Emergency procurement.

(a) The Executive Director may make or authorize others to make an emergency procurement when there exists a threat to public health, welfare or safety or circumstances outside the control of the Authority create an urgency of need which does not permit the delay involved in using more formal competitive methods.

(b) Whenever practical, in the case of a procurement of a supply, at least two bids shall be solicited.

(c) A written determination of the basis for the emergency and for the selection of the particular contractor shall be delivered to the following:

(1) Board Chair.

(2) Procurement Department.

(3) Legal Department.

(d) The written determination will be included in the contract file of both the Contract Administrator and the Legal Department.

§ 703. Board approval.

When practicable, the Board shall review a proposed sole source procurement or an emergency procurement before execution or provision of the Product, otherwise the Board will review the procurement at its next public meeting.

§ 704. Contract and purchase order.

(a) Upon receipt of the completed K-Form, the Legal Department will review the terms of the transaction and create a contract, when practicable. In the event the circumstances will not permit the creation or use of an Authority contract, the transactional documents will be assigned a contract number by the Legal Department and posted to the Authority's Internet website by the Director of Information Technology as provided in Chapter 8.

(b) The Procurement Department will forward the documents necessary to advance the sole source or emergency procurement, including the contract, to the Procurement Department for the creation of a purchase order.

(c) The total dollar amount identified in the purchase order shall include costs associated with the original contract period plus all subsequent renewal periods as specified on the source justification documents.

(d) Any purchase order issued as a result of the sole source process shall not exceed the term or scope of services of the original request. The Executive Director must resubmit a new sole source request for an extension of the term or a change in the scope of services.

CHAPTER 8. PUBLIC ACCESS TO CONTRACT RECORDS

§ 801. Public access.

(a) Contracts and procurement documents detailing Authority transactions are generally considered public records and are subject to public inspection as provided by law. Several exceptions to the open records policy do exist, particularly as to procurement. *See* 65 P.S. § 67.101 *et seq.*

(b) On or before March 30, 2018, the Executive Director shall provide public access to all Authority contracts and purchase orders completed pursuant to this policy through the Authority's Internet website.

CHAPTER 9. PREVAILING WAGE ACT

§ 901. General Requirement. For public works projects in excess of \$25,000, the Authority purchasing will include in the solicitation document and the contract the minimum prevailing wages to be paid by the contractor to its workers on the project.

§ 902. Duties of Contract Manager. Before soliciting bids or proposals, the Authority's Contract Manager will obtain from the Department of Labor and Industry the prevailing wage rates to be paid by the contractors on the public works project and include the prevailing minimum rates in the invitation for bids or request for proposals.

§ 903. Public Works Projects.

(a) A public works project shall mean construction, reconstruction, demolition, alteration, and/or repair work other than maintenance work, done under contract and paid for, in whole or in part out of the Authority funds or public money available to the Authority where the estimated cost of the total project is in excess of \$25,000, but shall not include work performed under a rehabilitation or manpower training program.

(b) Installation of Equipment or Materials. If it amounts to an alteration of the building, installation of equipment or materials should be considered a "public work."

(c) Repair vs. Maintenance. Maintenance is specifically excluded from the definition of "public work." "Maintenance work" is defined as the repair of existing facilities when the size, type, or extent of such facilities is not thereby changed or increased. The word "facilities" in this definition refers not only to a change in the size, type, or extent of the entire structure, but also to

its component parts. Re-roofing, road or parking lot resurfacing, installation of HVAC systems, replacement of sidewalks and curbs, and replacement of manhole covers are not “maintenance”.

§ 904. Required Contract Provisions. Every public works contract in excess of \$25,000 must contain at least the following conditions, provisions and requirements:

(a) The prevailing minimum wage rates as determined by the Department of Labor and Industry which shall be paid to the workmen employed in the performance of the contract. The contract shall specifically provide that the contractor shall pay at least the wage rates as determined in the decision of the Secretary of Labor and Industry and shall comply with the conditions of the act approved August 15, 1961, and the regulations issued thereto, to assure the full and proper payment of the rates.

(b) The stipulation that workmen shall be paid at least the prevailing minimum wage rates and other provisions to assure payment thereof.

(c) The contract provisions apply to work performed on the contract by the contractor and to work performed on the contract by subcontractors.

(d) The contractor shall insert in each of its subcontracts the stipulations contained in these required provisions and other stipulations as may be required.

(e) No workmen may be employed on the public work except in accordance with the classifications in the L&I prevailing wage rate determination. If additional or different classifications are necessary the procedure in § 9.107 (relating to petition for review of rates and hearings) shall be followed.

(f) Workmen employed or working on the public work shall be paid unconditionally, regardless of whether a contractual relationship exists or the nature of a contractual relationship which may be alleged to exist between a contractor, subcontractor and workmen, at least once a week, without deduction or rebate, on any account, either directly or indirectly except authorized deductions, the full amounts due at the time of payment, computed at the rates applicable to the time worked in the appropriate classification. Nothing in the contract, the act or the L&I regulations prohibits the payment of more than the general prevailing minimum wage rates.

(g) The contractor and each subcontractor shall post for the entire period of construction the prevailing wage rate determination, including the effective date of changes thereof, in a prominent and easily accessible place or places at the site of the work and at the places used by them to pay workmen their wages. The posted notice of wage rates shall contain the following information:

(1) The name of project.

(2) The name of the public body for which it is being constructed.

(3) The crafts and classifications of workmen listed in the general prevailing minimum wage rate determination for the particular project.

(4) The general prevailing minimum wage rates determined for each craft and classification and the effective date of changes.

(5) A statement advising workmen that if they have been paid less than the general prevailing minimum wage rate for their job classification or that the contractor or subcontractor are not complying with the act or this title, they may file a protest in writing with the Secretary of the PA Department of Labor and Industry within 3 months of the date of the occurrence, objecting to the payment to a contractor to the extent of the amount due or to become due to them as wages for work performed on the public work project. A workman paid less than the rate specified in the contract shall have a civil right of action for the difference between the wage paid and the wages stipulated in the contract, which right of action shall be exercised within 6 months from the occurrence of the event creating the right.

(h) The contractor and subcontractors shall keep an accurate record showing the name, craft or classification, number of hours worked per day and the actual hourly rate of wage paid, including employee benefits, to each workman employed by him in connection with the public work. The record shall include deductions from each workman. The record shall be preserved for 2 years from the date of payment and shall be open at reasonable hours to the inspection of the Authority and to the PA Department of Labor and Industry.

(i) Apprentices used by contractors and subcontractors shall be limited to numbers in accordance with a *bona fide* apprenticeship program registered with and approved by the Pennsylvania Apprenticeship and Training Council and only apprentices whose training and employment are in full compliance with the Apprenticeship and Training Act (43 P. S. §§ 90.1 - 90.10), approved July 14, 1961, and the regulations issued thereto shall be employed on the public work project. A workman using the tools of a craft who does not qualify as an apprentice within this subsection shall be paid the rate predetermined for journeymen in that particular craft or classification. A request for bids or proposals shall require confirmation of a compliant apprenticeship program, including the use of the following questions (or substantially similar versions) to be answered by the bidder or offeror (a negative answer to any question will render the bid or offer nonresponsive):

(1) Does bidder or offeror participate in an apprenticeship program approved as provided in subsection (i) for each craft or trade that will be engaged in the work to be performed? (If answering “yes”, documents confirming participation and enrollment should be attached.)

(2) Is bidder or offeror signatory to a collective bargaining agreement for each craft or trade that will be engaged in the work to be performed? (If answering “yes”, attached agreement(s).)

(3) Does bidder or offeror (or its labor for each craft or trade) have apprentices and trainees currently participating in the apprenticeship program(s)?

(i) If answering “yes” to the above question, has the bidder or offeror (or its labor for each craft or trade) graduated at least 1 enrollee in each of the past three years?

(ii) If answering “yes” to the above question, has the bidder or offeror (or its labor for each craft or trade) successfully graduated at least 75% of the program enrollees in each of the past three years? (Graduation rate is calculated by dividing graduates in a calendar year by the number of enrollees in that year.)

(j) Wages shall be paid without deductions except authorized deductions. Employers not parties to a contract requiring contributions for employee benefits which the PA Department of Labor and Industry has determined to be included in the general prevailing minimum wage rate shall pay the monetary equivalent thereof directly to the workmen.

(k) Payment of compensation to workmen for work performed on public work on a lump sum basis, or a piece work system, or a price certain for the completion of a certain amount of work, or the production of a certain result shall be deemed a violation of the Prevailing Wage Act and the PA Department of Labor and Industry regulations, regardless of the average hourly earnings resulting therefrom.

(l) Each contractor and each subcontractor shall file a statement each week and a final statement at the conclusion of the work on the contract with the Authority, under oath, and in form satisfactory to the PA Department of Labor and Industry, certifying that workmen have been paid wages in strict conformity with the provisions of the contract as prescribed by this section or if wages remain unpaid to set forth the amount of wages due and owing to each workman respectively.

(m) The provisions of the Prevailing Wage Act and the PA Department of Labor and Industry regulations shall be incorporated by reference in the contract.

(n) Before final payment is made, a final wage certification must be submitted by all contractors and subcontractors.

§ 905. Remedies and Penalties.

(a) For an unintentional failure to pay prevailing wages, the contractor will pay the difference or provide adequate security for the payment of the amounts required to be paid as prevailing wages to the affected workers.

(b) For an intentional failure, the contractor shall not be awarded any public contracts for three years, and the contractor shall be liable to the Commonwealth for liquidated damages, in addition to damages for any other breach of the contract, in the amount of the underpayment of wages.