

## REGULATION

Spring Branch Independent School District relies upon open, competitive procurements, to assure that it spends the public's money wisely. To do business with SBISD, suppliers must respect and not undermine that process. SBISD also expects suppliers to perform fully, timely, and honestly in accordance with the terms of their contracts and to demonstrate their responsibility through a history of successful and honest performance.

All Suppliers are expected to comply with this Regulation, and any and all SBISD Board Policies that may apply to them individually or as a business entity. All Suppliers should review carefully the conflict of interest policies.

The Director of Purchasing shall have authority to debar or suspend a vendor from consideration for award of contracts for violation of District policies, including this Regulation. The Director of Purchasing shall give notice to the vendor of the suspension or debarment and state the specific reason(s).

### **PROCEDURE:**

1. Suppliers are expected to independently and honestly prepare and submit bids and proposals based upon their own costs and operations without the benefit of knowing what their competitors will do. By this mechanism SBISD obtains the most advantageous price or proposal available among firms doing business in that market.
2. Suppliers shall adhere to the following procedures:
  - 2.1 Do not "cooperate" or share pricing information with competitors when preparing your bids.
  - 2.2 Anti-competitive activity, where competitors agree on the prices to be submitted, is known as "collusive bidding, or price fixing or "bid-rigging" and is illegal.
  - 2.3 Do not submit artificially high or low bids to make a competitor's price look more reasonable. This is known as "complementary bidding" and is similarly prohibited.
  - 2.4 Do not submit bids or proposals that are deceptively attractive with an expectation that after winning the contract you will receive your additional costs or inflate profits through change orders or related contracts in which you then have a "sole source" competitive advantage.

- 2.5 Do not manipulate unit cost awards by selectively underbidding particular line item costs in the expectation that their quantities will change after award (i.e., do not engage in “unbalanced bidding”).
3. Efforts by a supplier or by a lobbyist acting on behalf of a supplier to gain an “inside tract” by inhibiting competition or exploiting business or political relationships are prohibited.
4. For every proposed SBISD contract, the Office of Purchasing is required to consider whether the contractor has the requisite “responsibility” for the contract award. Before engaging in the SBISD procurement process, a vendor should take a hard look at their firm’s history of business integrity as well as whether their firm has the capacity of fully meeting the demands of the work. To do business with SBISD, a firm must:
  - 4.1 Be prepared to demonstrate that your firm has the resources and experience to do the job successfully;
  - 4.2 Be prepared to publicly and truthfully disclose your firm’s management and ownership, officers and owners, and current financial condition with an expectation that any of their legal, financial or
  - 4.3 Performance problems will need to be explained;
  - 4.4 Be current on your obligations, including paying corporate, real property, payroll taxes and social security contributions, as well as water, sewer, and other local assessments; and
  - 4.5 Pay prevailing wages, where legally required.
5. Do not offer a gift of any kind to a SBISD employee to directly or indirectly influence the drafting of procurement requirements, evaluations, awards, or payment. Such an offer is not a “gift”, but a bribe. The employee must report attempts at bribery.
6. The definition of a gift is very broad and includes anything that has value. If a SBISD employee suggests or demands a “gift” for providing any service, consideration, or advantage to you, you should report this to the Director of Purchasing.
7. Should you determine that a SBISD procurement employee, or his or her family member, would make a perfect addition to your firm, you must make sure that the employee is not involved in any capacity with any procurement that affects your firm before discussing a job offer, or even the prospect of a job. Wait until the employee is no longer involved with the procurement or until that particular procurement is completed before you discuss

employment prospects. Otherwise, your attempt to discuss employment may be considered an attempt to improperly influence the procurement.

8. Unlike private industry, firms competing for SBISD business are not permitted to obtain a competitive advantage by learning more about a proposal or contract than what is available to all other bidders or proposers. For each procurement there is generally a mechanism created to apprise potential suppliers of the information they need to prepare their bids or proposals. For example, all interested suppliers may be invited to ask questions at a pre-bid or pre-proposal conference or to direct inquiries to the contracting officer in writing (responses are then shared with all other suppliers). Often, negotiations will be conducted with qualified suppliers based upon a protocol developed for the procurement. Do not circumvent this process by asking a current or former SBISD official to provide you with information to which you are not entitled. Information relating to the identity of potential offerors, proposal contents, cost/pricing data, proprietary information and trade secrets, technical and cost evaluations, and rankings is available upon written request after the award has progressed to the point where the information is publicly available.
9. A supplier's ethical obligations do not end upon award of a contract. Gifts and job offers may not be offered to improperly influence SBISD employees to approve work, materials, or payments under the terms of a contract. Suppliers are required to perform fully in accordance with the terms of their SBISD contracts. Where progress payments are sought, or payments are made on a budgetary or cost reimbursement basis, a supplier's business records must truthfully support its claims for payment.
10. The unauthorized delivery of goods or services that do not meet contractual requirements, and for which the supplier charges as if contractual specifications had been met, is known as "product substitution". Product substitution is a violation of your contract. The following acts are considered product substitution:
  - 10.1 Providing inferior quality or substandard raw materials and finished products (making payments to County inspectors or quality control personnel to accept or overlook performance deficiencies, or to "expedite" their review invites criminal prosecution);
  - 10.2 Substituting generic or foreign-made products when particular brand names or domestically produced products are required in the contract specifications;
  - 10.3 Submitting for compliance testing, samples or items that are not representative of actual
  - 10.4 Production materials or products; and
  - 10.5 Substituting used or refurbished products without authorization.
11. Certain long-term contracts permit payments to be made as performance proceeds. These "progress payments" are generally payable upon proof that costs have been incurred or milestones in the contract have been reached. A supplier's falsification of labor or material

costs, or a misrepresentation of progress reached, to obtain faster SBISD payments, is illegal even where the total amount paid to the supplier is ultimately no more than the contract allows.

12. When a supplier enters into a SBISD contract for an amount based upon its actual costs, the supplier must maintain an accounting system that accurately categorizes its costs so that only costs that are “reasonable,” allowable and “allocable” to SBISD work are claimed for reimbursement. Some examples of costs that should not be claimed for reimbursement include fines, gifts, bribes, entertainment costs, and certain legal costs. “Cost mischarging” occurs when unrelated costs are improperly charged to a SBISD contract.
  - 12.1 Keep control over operations and assets by maintaining adequate systems of internal controls including separation of duties.
  - 12.2 Maintain reliable records to help insure that actions pertaining to the contract, inventory, expenses, and other reportable items are accurately, completely, and fairly recorded and reported.
13. The Supplier warrants and represents that he/she has not employed or engaged any person or entity to solicit or secure any contract, and that he/she has not paid, or agreed to pay any person or entity a fee or any other consideration contingent on the making of any contract.
14. The Supplier shall be considered an independent Supplier and not an employee of the Board. The Supplier shall be responsible for the reporting and remittance of all state and federal taxes as an independent Supplier, including without limitation, FICA and state and federal unemployment taxes. As the Supplier shall not be deemed a District employee, it is understood and acknowledged that the Supplier shall not be entitled to District employee benefits, including but not limited to, retirement and health insurance, and the Supplier expressly disclaims any right or entitlement thereto. If the Supplier is an employer, it

warrants that it has and will continue to carry at all times under this Agreement workmen's compensation meeting the minimum coverage requirements under Texas law.

15. The Supplier represents and warrants that there exists no actual or potential conflict of interest between the Supplier's performance under this Agreement and the Supplier's engagement or involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any extension thereof, the Supplier shall immediately advise the Director of Purchasing thereof.

## **16. Causes for Debarment or Suspension**

- 16.1 The causes for debarment or suspension shall include, but are not limited to, any or all of the following:
  - 16.1.1 Violating any federal, state or local law, code, ordinance, regulation or district policy in the performance of a contract. The particular provision shall be specifically identified in the notice to the vendor.
  - 16.1.2 Willfully or egregiously failing to perform in accordance with the terms and requirements of a contract/purchase order. Such actions shall include deliberate failure without good cause to perform in accordance with the specifications or within the time frame provided in the contract and/or a record of nonperformance or unsatisfactory performance in accordance with the terms of one or more prior district contracts.
  - 16.1.3 Intentionally providing false or misleading information or willfully omitting substantive information on an application, in a bid/proposal or in correspondence or communication to the district.
  - 16.1.4 Colluding with others in an attempt to restrain competition or fix prices.
  - 16.1.5 Attempting to obtain information, by whatever means, related to a bid/proposal submitted by a competitor in response to a procurement solicitation in order to obtain an unfair advantage prior to a contract award.
  - 16.1.6 Contacting proposal/bid evaluators or any other person who may have influence over the award regarding a bid or proposal under consideration, without authorization from the Office of Purchasing department, for the purpose of influencing the award of a contract; or
  - 16.1.7 Giving gifts (other than incidental advertising items), meals or trips to a district employee with intention to provide a personal benefit to that employee and not a benefit to the district as a whole and/or to influence the award of a contract.

## **17. Suspension Procedures**

- 17.1 The Director of Purchasing may suspend a vendor for cause from doing business with the district. The vendor shall be mailed a formal notice of suspension outlining the reasons for, the specific conditions of, and the effective period of the suspension. After the time to appeal the decision has passed, the suspended vendor shall be removed from all solicitation mailing lists and any bids or proposals submitted by the vendor shall not be considered.
- 17.2 The suspension of a vendor may be for a period of up to one (1) year. Upon completion of the suspension period it shall be the responsibility of the vendor to request reinstatement. Such request for reinstatement shall be made in writing. The Director of Purchasing may reinstate a suspended vendor when it is demonstrated that the cause for the suspension has been corrected.

## **18. Debarment Procedures**

- 18.1 The Director of Purchasing may debar a vendor from doing business with the system whenever, in the Director's sole opinion, it is in SBISD best interest to do so. A vendor may be debarred for a single incident of serious misconduct or after multiple less serious incidents. The Director of Purchasing shall notify the vendor of the reason for debarment and any action that the vendor must take in order to be eligible to contract again. After the time to appeal the decision has passed, the debarment shall continue until such time as the vendor takes corrective action as indicated in the debarment notice. The debarred vendor shall be removed from all solicitation mailing lists and any bids/proposals submitted by the vendor shall not be considered for award.

## **19. Appeal Process**

- 19.1 A debarred or suspended vendor may appeal the suspension or debarment by the Director of Purchasing by submitting a written request to the Associate Superintendent for Finance within seven (7) calendar days after receipt of the formal notice of debarment/suspension. If the vendor requests an appeal, the Associate Superintendent for Finance shall set a date for a hearing not more than thirty (30) calendar days after the vendor's request has been received. The Associate Superintendent for Finance or their designee has the burden of going forward with the evidence relied on by the Director of Purchasing in making the decision to suspend or to debar.
- 19.2 The vendor shall have the right to hear the evidence and will be given the opportunity to contest the evidence by producing documents or adducing witness testimony in support of the vendor's position. Ultimately, the vendor must provide specific evidence and reasons why the debarment/suspension is unwarranted. Based on this information, the debarment/suspension may be modified, rescinded or affirmed by the Associate Superintendent for Finance.
- 19.3 If the determination by the Associate Superintendent for Finance is not satisfactory to the vendor, the vendor may file an appeal with the Superintendent of Schools. A

letter requesting a review must be sent to the Superintendent within seven (7) days of the date indicated on the decision by the Associate Superintendent for Finance. Within a reasonable time after the filing of the appeal, the Superintendent shall send a certified letter indicating the disposition of the appeal. If it is not practical for the disposition to be made within thirty (30) days, the vendor shall be so informed. The decision of the Superintendent shall be final.