AKOBEN CYBER CHARTER SCHOOL

PROCUREMENT
POLICIES
&
PROCEDURES
MANUAL
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I. MISSION STATEMENT

Akoben Cyber Charter School will procure the highest quality goods and services by implementing a 'best in class' procurement management process. Central to this mandate will be the procurement of these goods and services at *competitive prices* from *reputable* and *responsible* suppliers. Our mission will be accomplished in accordance with applicable laws of the Commonwealth of Pennsylvania, the Pennsylvania School Code and Pennsylvania Charter School Law.

Akoben Cyber Charter School is committed to ensuring that our business management practices are carried out with the highest degree of professional ethics, integrity and competency. We are committed to implementing and utilizing the best procurement practices; building solid business partner relationships; networking with other procurement professionals; and continued advocacy of small business development by increasing the number of minority-owned and woman-owned businesses (MWBEs) who competitively bid on Akoben Cyber Charter School contract opportunities.

II. DEFINITIONS

Advertising. "Advertising" means the placement of a public notice: (1) in a newspaper of general circulation; (2) in a trade publication; (3) by electronic publication which is accessible to the general public; or (4) by issuance of invitations to bid or requests for proposals to bidders or vendors on a solicitation mailing list.

Akoben Cyber or **Akoben.** "Akoben Cyber" or "Akoben" means Akoben Cyber Charter School.

Bid. "Bid" means a firm and unconditional offer in response to an invitation to bid.

Bidder. "Bidder" means a business enterprise that submits a bid in response to an invitation to bid.

Business Enterprise. "Business Enterprise" means a corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association, or any other legal entity.

Contract. "Contract" means a type of written agreement, regardless of what it may be called, for the purchasing of supplies, materials, equipment, or services and awarded by a person or committee with delegated power from the Board of Trustees of the Akoben Cyber Charter School to award a contract, and executed by all parties in accordance with the Pennsylvania Public School Code, 24 P.S. §1-101, et seq., and Pennsylvania law.

Contractor. "Contractor" means the person, firm, or legal entity with which Akoben Cyber has entered into a contract.

Minority Business Enterprise or **Minority-Owned Business Enterprise** or **MBE.** "Minority Business Enterprise" or "Minority-Owned Business Enterprise" or "MBE" means a business enterprise (1) that is owned, operated, and controlled by one or more minority group members who have at least 51% ownership and (2) in which the minority group members have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.

Proposal. "Proposal" is an offer made in response to a request for proposals that may be subject to negotiation and award criteria set forth in the request for proposals.

Purchase Order. "Purchase Order" is written authorization for a contractor to proceed to furnish supplies, materials, equipment, or services in accordance with the invitation to bid, request for proposals, request for quotes, or work request and the awarded bidder's or vendor's bid, proposal, quote, or firm and unconditional offer. A purchase order constitutes Akoben Cyber's legal and binding acceptance of a bidder's or vendor's offer made through its bid, proposal, quote or firm and unconditional offer.

Purchasing. "Purchasing," means the buying, renting, leasing, or otherwise obtaining or acquiring any supplies, materials, equipment, or services. "Purchasing" includes all functions that pertain to the obtaining or acquiring of any supplies, materials, equipment, or services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Request for Proposals or **RFP.** "Request for Proposals" or "RFP" includes all documents, including those either attached or incorporated by reference, used for soliciting proposals.

Responsible Bidder. "Responsible Bidder" is a bidder that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

Responsible Vendor. "Responsible Vendor" is a vendor that has submitted a responsive proposal and that possesses the capability to fully perform the contract requirements in all respects and the integrity and reliability to assure good faith performance.

Responsive Bid or **Responsive Proposal.** "Responsive Bid" or "Responsive Proposal" is a bid or proposal that conforms in all material respects to the requirements and criteria in the invitation to bid or request for proposals.

Responsive Bidder. "Responsive Bidder" is a bidder that has submitted a bid that conforms in all material respects to the invitation to bid.

School Code or **Public School Code** or **Pennsylvania School Code.** "School Code" or "Public School Code" or "Pennsylvania School Code" means the Pennsylvania Public School Code of 1949, 24 P.S. §1-101, et seq., as amended, and as additionally applicable to Pennsylvania Cyber Charter Schools.

Services. "Services" means the furnishing of labor, time, or effort by a contractor not involving the delivery of specific supplies, materials, equipment or other end product other than drawings, specifications, or reports that are merely incidental to the required performance. "Services" includes utility services, and those services formerly provided by public utilities such as electrical, telephone, and water services.

Specifications. "Specifications" means the description of the physical or functional characteristics or requirements or the nature of a supply, material, equipment, or service item, and may include a description of any requirement for inspecting, testing, or preparing a supply, material, equipment, or service item for delivery.

Supplier. "Supplier" means a business enterprise that: (1) furnishes needed items to a contractor; and (2) either: (i) is involved in the manufacture or distribution of the supplies, materials; or equipment, or (ii) otherwise warehouses and ships the supplies, materials, or equipment.

Supplies. "Supplies" means any property, including but not limited to, equipment, materials, and leases of and installment purchases of tangible or intangible personal property. "Supplies" does not include buildings, real property, and leases of buildings or real property.

Vendor. "Vendor" means a business enterprise that submits a proposal, quote, or firm and unconditional offer in response to a request for proposals, request for quotes, or work request.

Women's Business Enterprise or **Woman-Owned Business Enterprise** or **WBE .** "Women's Business Enterprise" or "WBE" means a business enterprise: (1) that is owned, operated, and controlled by 1 woman or more women who have 51% ownership; (2) in which the women have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.

Work. "Work" means the supplies, materials, equipment, or services that is the subject of a contract.

[*Public School Code*, 24 P.S. §1-101, et seq.; Commonwealth of Pennsylvania Department of General Services *Field Procurement Handbook* , Chapter 2 *Definitions*]

III. COMPETITIVE SOLICITATION PROCESS

A. PURPOSE

The purpose of this procedure is to ensure that bid solicitations are awarded on the basis of a competitive process designed to select highly qualified vendors that provide goods and services to Akoben Cyber.

1. **Common Standard.** The key component to any competitive procurement is the *common standard*. The common standard is imperative so that Akoben may have the advantage of equal, fair and open competition, and eliminate issues of bias and/or favoritism. In short, the common standard provides the level playing field for those who want to compete for Akoben contracts.

   The common standard requires five (5) key elements: 1) previously prepared common specifications, terms, and conditions which are freely accessible to all competitors; 2) a common standard applied throughout the competitive bid or proposal process; 3) common treatment of bidders and vendors in the competitive bid or proposal process; 4) a common standard under which all competitive bids or proposals will be received; and 5) an award of contract which conforms to the specifications, terms, and conditions on which the competitive bids or proposals are taken. [*Ezy Parks v. Larson*, 454 A.2d 928 (Pa. 1983); Commonwealth of Pennsylvania Department of General Services *Field Procurement Handbook*, Chapter 13 *Specifications*]

2. **Changing Contract or Solicitation Specifications without Prior Notice to All Bidders Prohibited.** During the competitive bid process, Akoben Cyber shall be prohibited from changing terms of the bid or contract specifications, requirements, terms, or conditions unless it gives prior notice of such changes to **all** bidders. [*American Totalisator Co., Inc. v. Seligman*, 384 A.2d 242 (Pa. Cmwlth. 1977), *affd.*, 414 A.2d 1037 (Pa. 1980)]

3. **Private Negotiations are Prohibited During the Competitive Process.** During the competitive solicitation process, negotiations between Akoben Cyber and potential bidders are strictly prohibited. Should Akoben Cyber deviate from the requirements of the bid solicitation, the proper procedure shall be to set aside each bid and solicit new bids so that each vendor is treated openly and fairly. Commonwealth of Pennsylvania Department of General Services *Field Procurement Handbook*, Chapter 13 s*pecifications*]

4. **Conformance with Bid Instructions and Specifications.** Instructions to bidders are a crucial component of the contract between each contracting party. Bidding instructions and contract specifications are mandatory, and must be strictly followed to make the bid valid. [*City of Philadelphia v. Canteen Company, Division of TW Services, Inc.*, 581 A.2d 1009 (Pa. Cmwlth. 1990); *Conduit and Foundation Corp. v. City of Philadelphia*, 401 A.2d (Pa. Cmwlth. 1979)]

5. **Reservation of Rights.** Akoben Cyber reserves the right to waive any minor deviation from Akoben's bidding instructions when such deviations do not change mandatory bid instruction or bid specification requirement. [*Rainey v. Borough of Derry*, 641 A.2d 698 (Pa.Cmwlth. 1994)]

   A bid received by Akoben Cyber that does not conform or comply with all the bid specification requirements will not be accepted.

B. SCOPE OF PROCUREMENT PROCEDURES

These procurement procedures cover the competitive bidding and solicitation process for the acquisition of all goods and services that may be obtained by the Akoben Cyber Charter School.

C. PROCUREMENT POLICY

It is the policy of Akoben Cyber Charter School to obtain competitive bids and proposals for supplies, materials, equipment and professional services as required by law or may bring about significant cost savings.

D. PROCEDURE

Akoben Cyber will determine the need for supplies, materials, equipment and professional services at the direction of senior leadership. After such determination is made, competitive solicitations will be developed and issued only in the following forms: Bids, Request for Quotation, Request for Information or Request for Proposal. Prior to the issuance of any competitive solicitation, designated staff will determine the factors for which the bid, quotation or proposal will be evaluated.

In accordance with Public School Code, bid solicitation methodology will include the following:

- Up to $5000 requires one (1) verbal price quote from a vendor.
- $5001 to $10,000 requires three (3) verbal quotes via a phone bid.
- $10,001 to $24,999 requires soliciting a minimum of three (3) written quotes via a Request for Quotation.
- $25,000 and above requires solicitation via the Advertised Bidding process. Akoben Cyber will publicly advertise competitive solicitations in this category. Once bid solicitations are received, they will be opened; analyzed for pricing and compliance with specifications; and recommended for award to Akoben Cyber Board of Trustees.
- $100,000 and above or will require Request for Proposals from vendors.

[*Public School Code*, 24 P.S. §8-807.1]

1. **Cancellation/Rejection of Bids.** Competitive bids may be cancelled or rejected at any time prior to the time a contract is executed by all parties. The reasons for the cancellation or rejection of the competitive bids must be specifically set forth and made a part of the contract file. [*Midasco, Inc. v. Pennsylvania Turnpike Commission*, 813 A.2d 942 (Pa. Cmwlth. 2002); *Public School Code*, 24 P.S. §8-807.1(b); Pennsylvania *Commonwealth Procurement Code*, 62 Pa.C.S.A. §521]

2. **Emergency Bidding.** Akoben Cyber recognizes that emergencies may occur when an imminent danger exists to persons or property and the time necessary for competitive bidding cannot be provided because of the need for immediate and decisive action. [Public School Code, 24 P.S. 6-696(i)(3)]

E. INTENT OF BIDDING REQUIREMENTS

The intent of bidding requirements is to promote fair and equal competition that protects against favoritism, fraud and corruption in the awarding of public contracts. In addition, promoting open competition in bidding serves to create a level playing field for minority and women owned business enterprises (MWBEs). The design and implementation of bidding requirements are enacted for the benefit of taxpayers and not for the enrichment of bidders. Bidding requirements should be construed and administered to accomplish such purpose fairly and reasonably with sole reference to the public interest. [*Yohe v. Lower Burrell*, 208 A.2d 847 (Pa. 1965)]

Akoben will subscribe to a common standard on all matters that are material to the competitive bids. Akoben will not tolerate any scheme that promotes favoritism or unfairness, or which imposes limitations not applicable to all bidders. [*Ezy Parks v. Larson*, 454 A.2d 928 (Pa. 1983)]

F. BID EVALUATION

1. **Signature Required.** The bidder or proposer must sign a bid. Failure to sign a bid makes it non-responsive. [*Whitemarsh Township Authority v. Finelli Bros., Inc.*, 184 A.2d 512 (Pa. 1962).]

2. **Standards of Review for Contract Award.** The bid must be *responsive* to contract specifications. Responsiveness relates to a bidder's ability to offer to provide goods and services in accordance with specifications set forth in the solicitation. The bidder must be *responsible*. Responsible relates to a bidder demonstrating the requisite financial, ethical, experience and capacity to successfully perform the contract according to the contract specifications. [*Wilson v. New Castle City*, 152 A. 102 (Pa. 1930).]

   Bids shall be evaluated based on the requirements in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. [Pennsylvania *Commonwealth Procurement Code*, 62 Pa.C.S.A. §521(e).]

3. **Standard for Determining "*Lowest Responsive and Responsible Bidder.*"**
   Akoben Cyber will exercise sound discretion in determining the "*lowest responsive and responsible*" bidder. Akoben will also exercise sound discretion in awarding any contract to the "lowest responsible and responsive" bidder. [*A. Pickett Construction, Inc. v. Luzerne County Convention Center Authority*, 738 A.2d 20 (Pa. Cmwlth. 1999)].

G. BID OPENINGS

The qualified staff as designated by Akoben Cyber leadership shall open bids received from vendors. Bid openings will occur with one (1) or more witnesses present at a previously designated time and place. The amount of each bid, together with the name of each bidder, shall be recorded. [Pennsylvania *Commonwealth Procurement Code*, 62 Pa.C.S.A. §512(d)]

H. BID MODIFICATIONS AND/OR WITHDRAWAL

1. **Prior to Bid Opening.** Before a bid opening, a bidder may modify or withdraw its bid, by written notice or in person.

2. **After Bid Opening.** After a bid has been opened, a bidder shall be entitled to withdraw it after it has been opened.

I. BID REVIEW

Staff designated by Akoben Cyber will review each bid submission to determine whether the submitting vendor has complied with the contract specifications and has offered the "lowest responsive" bid and is the "lowest responsible" bidder.

J. NON-COLLUSION

Bid-rigging is the specific effort by two or more vendors to determine in advance the outcome of a bid competitively advertised. Bid-rigging and collusion are illegal activities. Examples of such activities include the following:

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

In an effort to protect Akoben against such activities, each competitive bid solicitation will include the requirement for bidders to provide a ***Non-Collusion Affidavit*** with their bids or proposals submissions.

K. BIDDER DISQUALIFICATION

Akoben Cyber has the right to disqualify, suspend or debar a bidder from submitting a bid or receiving a contract award if such action has been taken against a bidder by any another similar entity, or a federal, state or local governmental entity. Vendors may also be disqualified from doing business with Akoben Cyber for any of the following reasons:

- Failure to deliver or comply with the specifications and/or the contract terms and conditions;
- Failure to deliver or perform on a timely basis;
- Offering any gift, gratuity, favor or advantage present or future, to any Akoben employee exercising procurement responsibility. This includes extending any discount or privilege not available to all Akoben Cyber's employees;

- Failing to disclose a conflict of interest in a bid or contract;
- Conviction of any criminal offense involving public contracting.

[Public School Code, 24 P.S. §8-809.]

L. PUBLIC NOTICE

Akoben Cyber shall give public notice of the competitive bid solicitation by advertising it via publication, electronic mailing or posting on Akoben's website.

M. RECEIPT OF BIDS AND PROPOSALS

Akoben Cyber will prominently display the time and date for receipt in each competitive bid solicitation and/or proposal. If a competitive bid solicitation and/or proposal is not received by the specified date, time and location, it will be deemed non-responsive, not considered for review and returned to the submitting vendor. However, Akoben Cyber reserves the right to accept late proposals if deemed in the best interest of the school.

N. CONTRACT AWARD

Akoben Cyber shall award contracts to vendors whose bid or proposal submissions have been determined to be most advantageous to the school and solely based on the evaluation factors or specification criteria set forth in the solicitation or proposal.

1. **Split Awards.**
   Akoben Cyber reserves the right to make awards on an item-by item basis. This process may take place when certain goods or items are not part of a system or lot whereby Akoben can obtain better pricing. This can be obtained without forfeiting service, delivery or quality.

2. **Vendor Over-Shipments.**
   Akoben Cyber shall not accept over-shipments. If over-shipments occur, the respective goods must be picked up and returned at the vendor's expense.

O. NOTIFICATION TO UNSUCCESSFUL BIDDERS

Akoben Cyber shall provide written notification to unsuccessful bidders. Akoben Cyber shall, at the request of a vendor, conduct a debriefing session to furnish the basis for the selection and award of the contract in question.

IV. VENDOR DEBRIEFING

Vendor debriefings may be scheduled at the request of any bidder, proposer or Akoben Cyber. Bidder may initiate the debriefing process by directly contacting Akoben Cyber in writing, by telephone, facsimile or E-mail. Vendor debriefings will be scheduled within 20-30 days following the request. Vendor debriefings shall focus on the debriefing vendor's proposal only. A debriefing summary shall be required for Akoben's contracting records.

A. PURPOSE

The essential purpose of a vendor debriefing is to:

- Explain the rationale for the contract award.
- Explain to unsuccessful vendors why they were not selected for award.
- Instill confidence in the vendor that they were treated equally, openly and fairly.
- Assure the vendor their proposals were evaluated in accordance with the solicitation requirements and any other applicable regulations.
- Assist the vendor in identifying weaknesses in their bid or proposal so they may prepare more competitive submissions to Akoben Cyber in the future.

A Vendor debriefing shall not be:

- A side-by-side comparison of one vendor's proposal against another.
- A debate over the award decision.

B. DEBRIEFING ESSENTIALS

Vendor debriefings shall be provided to unsuccessful bidders. At a minimum, the debriefing must include:

- Evaluation of their bid or proposal's significant deficiencies.
- The overall ranking of the bidders.
- A summary of the rationale for award.

C. LIMITS OF DISCLOSURE

Vendor debriefings shall not disclose:

- Commercial or financial information that is confidential and/or privileged.
- Vendor manufacturing processes and techniques.
- Competitors' Trade secrets.

V. VENDOR PAYMENT PROCESS

It shall be the responsibility of the vendor to invoice Akoben Cyber for the goods, products and services rendered. Akoben Cyber shall render vendor payment within 30-60 days following acceptance of the goods or services. Prior to vendor payment, Akoben Cyber will utilize a matching payment process to ensure accurate payments in order to avoid fraud and/or abuse.