

**From:** Mainella, Lara  
**To:** McGuire, Monette  
**Cc:** Mainella, Lara  
**Subject:** info for sweatfree committee  
**Date:** Thursday, May 19, 2011 3:50:34 PM

Hi Monette – I'm sorry I can't be at the meeting but I have a volunteer obligation on Thursday nights.

Here's my best attempt to give some information. I understand the committee would like to test out a new "sliding scale" method for evaluating the sufficiency of bidder disclosure statements. We have a hard time getting full compliance from vendors so you'd like to recognize this reality by grading or ranking the bidders based on the quality or completeness of their submissions (as far as the disclosure statements are concerned.)

I understand you've run the numbers on a mock bid. Now you want to test it on a live bid.

Generally – it would not be a problem 'test out' a new method on just one solicitation – as long as it's explained very carefully in the solicitation and applied equally to all bidders. This is because the city has a lot of flexibility in how it chooses its vendors in the purchase of goods. But you can't do this if the ordinance as written would not allow the new method.

If the committee wants to "test out" a new method of evaluating bidders on apparel contracts, the first question is whether the evaluation method can be implemented under the current ordinance language. 4.25(5)(b), Bidder Disclosure Statements, is the section that tells us what we're supposed to do with their statements. This section makes it mandatory for all bidders to submit the disclosure statements. I've previously advised this group that I believe the intent of the ordinance is "all or nothing" and that complete affidavits/disclosure statements are a pre-requisite to awarding a contract. The ordinance as currently drafted does not allow the flexibility to award a contract when the bidder has failed to provide these forms or has filled them out in a way that is unsatisfactory/ does not meet the requirements of 4.25(5)(b).

Now – the only possible caveat to that is 4.25(5)(b) says "the city reserves the right not to award the contract." I suppose we could interpret that to mean that the city also reserves the right TO award the contract, despite a failure to submit the forms or a failure to comply with the rest of the ordinance.

The city has a lot of flexibility, in general, in determining how to grade and rank proposals for goods and services. This ordinance is silent on that grading and ranking, but in my opinion the ordinance strongly suggests that there is no leeway and we are not going to award a contract to a bidder who refuses to complete the disclosure forms.

In my opinion – the cleanest way to change the city's practices in evaluating proposals for compliance with the disclosure statements would be to amend section 4.25(5) to change and/or clarify the requirement of submitting bidder disclosure statements. There are several options for doing that:

- (a) Add a clause to the ordinance that allows the sweatfree committee to establish a policy for grading/evaluating the sufficiency of their submitted forms. The ordinance amendment would authorize the committee to make changes at the committee level and this would allow some fine-tuning. However – any new procedures should be properly noticed at a meeting of your subcommittee and described in detail in solicitations....
- (b) Amend the ordinance to specify the new method/ procedure you want to use (sliding scale or whatever you decide) and specify that now. If you think you might want to change it or review it after awhile, include a 'sunset' clause in the ordinance.

Option (a) would be pretty novel and nuanced but I think it could be done if you are not ready for option (b). I would want to meet with somebody to learn the specifics.

I hope this helps. If this is still too confusing, invite me to your next meeting (with plenty of notice) and we can talk through the concerns as a group. Thank you, Lara

Lara Mainella  
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