

In Support of the Proposed “Best Value” Charter Amendment and May 16 Ballot Question

What is the amendment about? City voters will have the opportunity on May 16 to weigh in on a proposed Philadelphia Home Rule Charter amendment allowing city government to award certain contracts using a “best value” procurement methodology instead of to the “lowest responsible bidder.” The latter is currently used to procure supplies and equipment, construction and non-professional services (e.g., building maintenance, park repair), and concessions from vendors who assert they can provide the good or service at the lowest cost to the city. The Charter amendment, if approved by voters, would allow the option to award such contracts through a different process that includes other criteria in addition to cost, with the aim of yielding the “best value” for the city.

Background on Seventy’s position: Given the Committee of Seventy’s nonpartisan mission to inform voters and advocate for integrity and efficiency in government, a task force of Board members was convened to analyze the best value proposal and determine a position on the ballot question. Courtney Saleski (DLA Piper) and Michael Schwartz (Pepper Hamilton LLP) led the group, both of whom have prior experience prosecuting fraud and corruption cases for U.S. Attorneys’ Offices. Feedback was sought from city officials, subject matter experts and the general public to supplement research conducted by Board members and staff, with particular attention on whether the proposal: **1)** would have strong safeguards against abuse or corruption; and **2)** is necessary for the city to modernize its procurement system.

For the following reasons, Committee of Seventy supports the approval of the May 16 ballot question.

1) Philadelphia’s strict pay-to-play laws, which include campaign contribution limits and disclosure requirements, would apply to the new process.

The city’s campaign finance and pay-to-play rules, passed in 2005, are among the strongest in the country and would apply to the new best value process. These include, for firms to remain eligible to seek city work, **strict limits on political donations** and **mandatory disclosure requirements** that provide a two-year lookback on contributions and certain other activities. These rules currently apply to a separate procurement process for awarding professional services contracts (e.g., legal services, IT support), which already uses a best value methodology to incorporate criteria besides cost.

Chief Integrity Officer (CIO) and former Committee of Seventy Vice President Ellen Kaplan is confident that these rules, in addition to a clear, objective and transparent contract evaluation and selection process, provide sufficient safeguards against outside influence.

2) Using best value procurement is common practice in other governments and the private sector to attain higher quality goods and services.

Low bid procurement was a safe and reasonable approach for government to use broadly in the past, but the increasing complexity of 21st-century goods and services requires a more sophisticated process. **Today, the federal government, the Commonwealth and 18 of the 20 largest U.S. cities employ a version of best value procurement.**

City procurement officials argue the current law requiring that all non-professional services contracts be awarded to the **“lowest responsible bidder” is overly restrictive and can result in lower quality and higher costs**. Expanding the range of criteria (e.g. vendor history and past performance) for evaluating and selecting vendors can lead to: higher-quality and longer-lasting work, fewer change orders, filtering out unqualified bidders, mitigating project risk and avoiding disputes over bidder qualifications. Reforming this aspect of city procurement may also help attract capable vendors, increasing competition.

Notably, implementing a **best value methodology is part of a menu of procurement-related improvements** (e.g., single online portal for contracts, reverse auctions) currently being pursued by city officials, who acknowledge the “procurement environment is ever-changing” and a slate of reforms is necessary to fully modernize the system. Many of these, including best value contracting, were listed in a 2014 study on Philadelphia procurement practices conducted by the **Harvard Kennedy School’s Ash Institute**. Best value is also supported by **NIGB: Institute for Public Procurement** and experts from the **National Association of State Procurement Officials**.

3) City officials have demonstrated that the policies and procedures critical to an efficient and transparent procurement process are ready to execute.

The Office of the Chief Administrative Officer (CAO) and Procurement Department have been leading a working group of representatives from across city government tasked with developing the new best value process and preparing for implementation should the May 16 ballot question be approved. This project has included surveying best practices in other cities, and interviewing public- and private-sector procurement officers in designing a workable process for Philadelphia.

Seventy’s Board members and staff are satisfied with the components of the proposal we deem critical to ensure efficiency and integrity in the new process. This includes, but is not limited to: the requirement that **formal regulations** be promulgated to articulate new processes (which necessarily involves public comment); **detailed and publicly-available justification** from the Procurement Commissioner for each contract procured via best value instead of low bid; and **standards for the evaluation committees awarding contracts** to ensure technical expertise and objectivity (e.g., required confidentiality and conflict of interest statements). Most important, all segments of the new process – from contract specifications to evaluation criteria and scoring – would be available online, with sufficient documentation allowing any outside observer to determine how well – or not well – the best value procedures are working.

Seventy’s Position and Monitoring the Implementation of Best Value

The Committee of Seventy supports Philadelphia allowing best value contracting as part of its efforts to modernize city procurement. However, the success of the process will depend on the regulations issued and policies developed by the Procurement Department, in conjunction with the CAO, CIO and other city agencies. Seventy intends to provide public comment on the new regulations during the drafting process and will continue to review and monitor the new process through its implementation, releasing a report with its findings in 2018. Seventy urges voters, the press, vendors and other stakeholders to also provide close scrutiny, flagging potential issues or opportunities for improvement.