

## FEDERAL FUNDS PURCHASING

The Board of Education views purchasing as serving the educational program by providing necessary supplies, equipment and related services. Purchasing will be centralized in the business office under the general supervision of the Purchasing Agent designated by the Board.

This policy applies to contracts for purchases, services, and public works wholly or in part funded with federal financial assistance (direct or reimbursed). The requirements of this policy also apply to any sub-recipient of the funds.

(For purchasing requirements applying to contracts for purchases, services, and public works funded with non-federal funding, policy 6700, Purchasing applies.)

All federally funded projects, loans, grants, and sub-grants, whether wholly funded or in part, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for federal awards (Uniform Guidance) unless the federal agency or state pass-through agency awarding the funds has stated otherwise in writing.

The district will follow all applicable local, state, and federal purchasing requirements when spending federal funds. In the event local, state, or other federal requirements are more restrictive than Uniform Guidance indicates, the more restrictive requirement will apply.

All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required by Uniform Guidance.

### **Competitive Bidding**

Purchase contracts and public works contracts subject to competitive bidding will be awarded to the lowest responsible bidder possessing the ability to successfully meet the obligations under the terms and conditions of the contract.

If possible, purchase contracts can be divided into smaller components to allow the greatest degree of participation by small and minority businesses and women business enterprises. However, no contract may be divided to bring the cost under bid thresholds or to evade any requirements under this policy or state and federal law.

Purchases made with federal funding in whole or in part must be necessary to perform the scope of work and must avoid purchasing of unnecessary or duplicative items.

The Purchasing Agent shall procure all contracts in accordance with the requirements of this section of the policy.

For all purchasing costing \$250,000 or more, the Purchasing Agent shall develop an estimate of the cost of the purchasing prior to soliciting bids. These estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for public works contracts may be developed by the project designer, or construction manager.

All requests for bids must include:

- A clear and accurate description of the technical requirements for the materials, products, or services to be procured. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and “or equivalent” must be included in the description;
- All other requirements which bidders must fulfill; and
- All other factors to be used in evaluating bids or proposals.

Additionally, all requests for bids must also include:

- Acknowledgment of the use of federal funding for the contract;
- Notice that bidders must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award; and
- Notice to prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.

Designers, suppliers, and contractors who assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be not be allowed to submit bids.

Requests for bids shall be prepared in a way to be fair, full, and provide for open competition. They may not contain technical features that restrict competition including but not limited to unnecessary supplier experience, specifying a brand name without allowing for “or equal” products, or other unnecessary or technical requirements that have the effect of restricting competition.

The district will only accept bids which include fixed pricing, therefore will not accept the following:

- “Cost plus percentage of cost” contracts
- “Time and materials” contracts (unless no other form of contract is suitable and the contract includes a “Not to Exceed” amount).

Should a time and materials contract need to be used, it must have express written permission of the federal agency or state pass-through agency that awarded the funds.

The Board directs the Purchasing Agent to review the federally debarred and suspended bidder's list to ensure that no contract shall be awarded to a contractor included on that list.

The Board acknowledges that under certain circumstances, it may be more economical to lease equipment or buildings instead of purchasing. The Purchasing Agent will perform an analysis of such options to determine the most economical approach.

Documentation must be maintained by the Business Office detailing the history of all purchasing. The documentation must include at least the following:

- rationale for the purchasing method used,
- selection of contract type,
- contractor selection or rejection;
- basis for the contract price; and
- any other documentation required under state law, as outlined in Board policy 6700, Purchasing, and its associated regulation 6700-R.

All documentation relating to the award of any contract must be made available to the granting agency upon request.

### **Conflict of Interest**

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the School District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the School District may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees or agents of the School District.

### **Geographic Preference**

No contract shall be awarded on the basis of a geographic preference, except that geographic location can be a selection criteria for architecture and engineering contracts as long as an appropriate number of firms are able to compete for the contract.

### **Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms**

The district shall take the following actions to use small and minority businesses, women's business enterprises, and labor surplus area firms, when possible:

1. Place qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
3. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
4. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
5. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in items 1 through 5 above.

### **Specific Purchasing Procedures**

The district shall solicit bids in accordance with the requirements under this section of the policy based on the type and cost of the contract.

### **Purchase Contracts and Public Works Contracts**

Purchase contracts for physical items and/or services, and public works contracts shall be procured using the following processes, depending on the contract amount:

1. Contracts of \$10,000 and below are subject to the Uniform Guidance "micro-purchase" method of procurement and the district's policy and regulation on purchasing. To the extent practicable, purchases must be distributed among qualified suppliers.
2. Contracts of over \$10,000 up to \$20,000 (for purchase contracts) or up to \$35,000 (for public works contracts) are subject to the Uniform Guidance "small purchase" method of procurement and the district's policy and regulation on purchasing, except where the "non-competitive proposals" method is determined to be most appropriate.
3. Contracts of over \$20,000 (for purchase contracts) or over \$35,000 (for public works contracts) up to \$250,000 are subject to the requirements of New York State with regard to competitive bidding, as outlined in the district's policy and regulation on purchasing, except where the "non-competitive proposals" method is determined to be most appropriate.

4. Contracts of over \$250,000 are subject to either (1) a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure and state competitive bidding procedures (outlined in the district’s policy and regulation on purchasing or (2) the “competitive proposals” method of procurement, except where the “non-competitive proposals” method is determined to be most appropriate.

### **Methods of Procurement**

Sealed Bids: The following rules apply to the use of sealed bids:

1. Bids will be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publically advertised;
2. The invitation for bids, which will include any specifications and pertinent attachments, will define the items or services in order for the bidder to properly respond;
3. All bids will be opened at the time and place prescribed in the invitation for bids, and the bids will be opened publicly;
4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
5. Any or all bids may be rejected if there is a sound documented reason.

Sealed bids may not be appropriate when:

1. Time does not permit the solicitation, submission and evaluation of sealed bids;
2. It is necessary to conduct discussions with the responding offerors about their bids;
3. A complete, adequate, and realistic specification or purchase description is not available;
4. The procurement does not lend itself to a firm fixed price contract, so the selection of a successful bidder cannot be made principally on the basis of price; or
5. There is a reasonable expectation that only one sealed bid will be received.

Competitive Proposals: Where the use of sealed bids is not appropriate, competitive proposals may be used:

1. Requests for proposals will be publicized and identify all evaluation factors and relative importance. All responses to proposals will be considered to the extent practical;

2. Proposals will be solicited from an adequate number (at least two) of qualified sources;
3. The district will utilize the method outlined in policy 6741 to evaluate the proposals and select a recipient;
4. The district will award contracts to the responsible firm whose proposal is most advantageous to the program, considering price and other factors; and
5. For qualifications-based architectural/engineering services, the district may select the most qualified competitor, subject to negotiation of fair and reasonable compensation, where price is not used as a selection factor.

Noncompetitive Proposals: Purchase Contracts or Public Works Contracts of over \$10,000 may utilize noncompetitive proposals, where only one source is solicited, when one or more of the following conditions apply:

1. The item is available only from a single source;
2. There is an emergency which does not permit delay due to soliciting competition;
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the district; or
4. The district solicits from of a number of sources and determines competition to be inadequate.

#### **Important Additional Information**

Any contract for the erection, construction or alteration of buildings when the entire cost of such work shall exceed \$500,000 must have specifications prepared in accordance with New York State General Municipal Law §101 (The Wicks Law).

All bidders shall submit all documents required by General Municipal Law Article 5-A.

#### **Contractor Oversight**

The district must maintain oversight of the contract to ensure that the contractor is performing in accordance with the contract terms, conditions, and specifications.

Cross-ref: 6700, Purchasing and 6700R, Purchasing Regulation

Ref: 2 CFR §§200.318; 200.319; 200.323; 200.465  
General Municipal Law §§103; 104-b

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