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Revised Policy - Vol. 43, No. 1 - UGG/EDGAR Revisions

6325 - PROCUREMENT - FEDERAL GRANTS/FUNDS

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or District matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, Board of Education policies, and administrative procedures.

The Superintendent shall have and use a procurement and contract administration system in accordance with the USDOE requirements (2 C.F.R. 200.317-.326), including affirmative steps for small businesses, and minority businesses, and women's business enterprises, veteran-owned businesses, and labor surplus area firms, for the administration and management of Federal grants and Federally-funded programs. The District shall maintain oversight that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of the District's documented general purchasing Policy 6320 and AG 6320A.

When required by Federal program legislation, all Federally-funded contracts in excess of \$2,000 related to construction, alteration, repairs, painting, decorating, etc. must comply with Davis-Bacon prevailing wage requirements.

All District employees, officers, and agents who have purchasing authority shall abide by the standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents engaged in the selection, award, and administration of contracts as established in Policy 1130, Policy 3113, and Policy 4113 - Conflict of Interest.

The District will avoid acquisition of unnecessary or duplicative items. ~~Consideration~~ Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase and, where appropriate, an analysis shall be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. When appropriate, an analysis shall be made between leasing and purchasing property or equipment to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds.

To foster greater economy and efficiency, the District may enter into State and local intergovernmental agreements, where appropriate, for procurement or use of common or shared goods and services.

Competition

All procurement transactions ~~under the for the acquisition of property or services required under a~~ Federal award paid for from Federal funds or District matching funds shall be conducted in a manner that provides encourages full and open competition and that is in accordance with 2 C.F.R. Part 200, good administrative practice, practice and sound business judgment. To ensureIn order to promote objective contractor performance and eliminate unfair competitive advantage, the District shall exclude any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bidsbids, or requests for proposals from competition for such procurements.

~~Examples of situations that may restrict competition include, but are not limited to~~Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- A. unreasonable requirements on firms ~~in order~~ for them to qualify to do business
- B. unnecessary experience and excessive bonding requirements
- C. noncompetitive pricing practices between firms or between affiliated companies
- D. noncompetitive contracts to consultants that are on retainer contracts
- E. organizational conflicts of interest
- F. specification of only a "brand name" product instead of allowing for an "or equal" product to be offered and describing the performance or other relevant requirements of the procurement
- G. any arbitrary action in the procurement process

~~Further, the District does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals unless 1) an applicable Federal statute expressly mandates or encourages a geographic preference; or 2) the District is contracting for architectural and engineering services, in which case geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.~~

To the extent that the District uses a pre-qualified list of persons, firms, or products to acquire goods and services that are subject to this policy, the pre-qualified list includes enough qualified sources ~~as~~ to ensure maximum open and free competition. The District allows vendors to apply for consideration to be placed on the list periodically. **[insert frequency. See Drafting Note]**

[DRAFTING NOTE] ~~Drafting Note: The District shall allow vendors not on the pre-qualified list to apply for placement on the list periodically. The District may determine how frequently the pre-qualified list becomes open for new vendors or whether it is open continuously.]~~

The District shall require that all prequalified lists of persons, firms, or products which are used in procurement transactions are current and include enough qualified sources to provide maximum open competition. When establishing or amending prequalified lists, the District (or subrecipient) must consider objective factors that evaluate price and cost to maximize competition. ~~acquiring goods and services are current and include enough qualified sources to provide maximum open and free competition.~~ The District shall not preclude potential bidders from qualifying during the solicitation period.

To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and 2 C.F.R. Revisions 2024: Unofficial Comparison Version assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

Solicitation Language (Purchasing Procedures)

The District shall have written procurement procedures (in accordance with 2 C.F.R 200.319(d)) that require that all solicitations made pursuant to this policy incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. ~~material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition.~~ The description may include a statement of the property, equipment, qualitative nature of the material, product, or service to be procured. When necessary, the description must and, when necessary, shall set forth those minimum essential characteristics and standards to which the property, equipment, or service shall conform ~~it shall conform if it is to satisfy its intended use.~~ Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to clearly and accurately describe ~~make a clear and accurate description of~~ the technical requirements, a "brand name or equivalent" description of features to provide procurement requirements may be used. The specific features of the named brand must be clearly stated and the District must identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals ~~may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which shall be met by offers shall be clearly stated and identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.~~

The Board will not approve any expenditure for an unauthorized purchase or contract.

Procurement Methods

The District shall have and use documented procedures, consistent with the standards described above, for the following methods of procurement:

A. Informal Procurement Methods

Informal procurement methods for small purchases expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction for property or services under a Federal award does not exceed the simplified acquisition threshold or a lower threshold established by the State, formal procurement methods are not required. The District may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal procurement methods used for procurement of property or services at or below the simplified acquisition threshold include:

1. Micro-Purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 [not to exceed \$10,000]. To the maximum extent practicable, the District should distribute micro-purchases equitably among qualified suppliers.

Micro-purchases may be made without soliciting competitive quotations if the Superintendent considers the price to be reasonable based on research, experience, purchase history, or other relevant information, and maintains documents to support its conclusion documents are filed accordingly. The District shall maintain evidence of this reasonableness in the records of all purchases made by this method.

~~[] Unless otherwise defined by State or local law, Districts are responsible for determining and documenting an appropriate micro-purchase threshold in accordance with 2 C.F.R. 200.320(a)(iv) based on internal controls, an evaluation of the risk, and its documented procurement procedures. The micro-purchase threshold used by the District shall be authorized or not prohibited under State, local, or tribal laws or regulations.~~

An eligible District may self-certify a threshold of up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal agency or pass-through entity and auditors in accordance with 2 C.F.R. 200.334. A District which is qualified as a low-risk auditee for the most recent audit (C.F.R. 200.520) may increase the micro-purchase threshold up to \$50,000. An eligible District may self-certify the increased micro-purchase threshold on an annual basis after completing the annual internal institutional risk assessment to identify, mitigate, and manage financial risks. The self-certification, in accordance with 2 C.F.R. 200.334, must include a justification, clear identification of the threshold, and supporting documentation of any of the following: the qualifications listed above.

- a. a qualification as a low-risk auditee in accordance with the criteria in 2 C.F.R. 200.520;
- b. an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or
- c. for public institutions, a higher threshold is consistent with State law.

[DRAFTING NOTE: The Federal regulation allows for a \$50,000 threshold. While this authority is allowed for an entity qualified as a low-risk auditee, Neola does not suggest its use due to the complexity and subjectivity of the mechanism.] [END OF OPTION]

2. Small Purchases

Small purchases include the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold of \$250,000 [not to exceed \$250,000]. Small purchase procedures require that price or rate quotations shall be obtained from (X) THREE (3) [OR] (-) an adequate number of [END OF OPTION] qualified sources. **[DRAFTING NOTE: Drafting Note: Unless the pass-through entity or State law defines the number of quotes required, the District may define in policy how many quotations are adequate. The number must be greater than one (1).]**

Districts are responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures which must not exceed the threshold established in the Federal Acquisition Regulations ("FAR") (FAR). When applicable, a lower simplified

acquisition threshold used by the ~~District non-Federal entity~~ must be authorized or not prohibited under State, local, or tribal laws or regulations.

B. Formal Procurement Methods

When the value of the procurement for property or services under a Federal award exceeds the simplified acquisition threshold or a lower threshold established by the State, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement method can be used in accordance with the standards on competition in 200.319 or non-competitive procurement. The formal methods of procurement are:

1. Sealed Bids

Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment which amounts to more than \$250,000 ~~_____ [the lesser of the established Small Purchase threshold or \$250,000]~~ and when the Board determines to build, repair, enlarge, improve, or demolish a school building/facility, the cost of which will exceed \$50,000.

In order for sealed bidding to be feasible, the following conditions shall be present:

- a. a complete, adequate, and realistic specification or purchase description is available;
- b. two (2) or more responsible bidders ~~have been identified as~~ are willing and able to compete effectively for the business; and
- c. the procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally ~~based on the basis of~~ price.

When sealed bids are used, the following requirements apply:

- a. Bids shall be solicited in accordance with the provisions of State law and Policy 6320. Bids shall be solicited from ~~(X) TWO (2) [OR] (1) an adequate number of [END OF OPTION]~~ qualified suppliers, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised.
- b. The invitation for bids ~~must define the items or services with specific information, including any required specifications, for the bidder to properly respond~~ will include product/contract specifications and pertinent attachments and shall define the items and/or services required in order for the bidder to properly respond.
- c. All bids will be opened at the time and place prescribed in the invitation for bids; bids will be opened publicly.
- d. A firm fixed-price contract ~~is awarded~~ award will be made in writing to the lowest responsive bid and responsible bidder. ~~When specified in the invitation for bids~~ Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts ~~must~~ may only be used to determine the low bid when ~~the District determines they are a valid factor based on~~ prior experience ~~indicates that such discounts are usually taken.~~
- e. The Board reserves the right to reject any or all bids ~~but must document and provide a justification for all bids it rejects~~ for sound documented reason(s).

2. Proposals

Procurement by proposals is a method in which either a fixed-price or cost-reimbursement ~~type~~ contract is awarded. ~~This method is~~ Proposals are generally used when conditions are not appropriate for the use of sealed bids or in the case of a recognized exception to the sealed bid method. **DRAFTING NOTE** ~~Drafting Note:~~ **Federal law does not require a competitive proposal unless the procurement is for over \$250,000. The State/District may set a lower threshold for sealed bids and competitive proposals. Ohio law requires sealed bids when the Board seeks to build, repair, enlarge, improve, or demolish a school building/facility if the cost will exceed the State competitive bidding threshold enumerated in R.C. 9.17 \$50,000 (see Policy 6320).]**

If this method is used, the following requirements apply:

- a. Requests for proposals ~~require public notice and must be publicized and~~ identify all evaluation factors and their relative importance. ~~To the maximum extent practicable, any proposals submitted in response to the public notice must be considered. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.~~
- b. Proposals shall be solicited from **(X) three** (3) ~~[OR] () an adequate number of~~ **[END-OF OPTION]** sources.
- c. The District ~~must have written procedures~~ **shall use its written method** for conducting technical evaluations ~~and for making selections of the proposals received and for selecting recipients.~~
- d. Contracts ~~must~~ **shall** be awarded to the responsible ~~offeror~~ **firm** whose proposal is most advantageous to the ~~District considering price and other factors~~ **program, with price and other factors considered.**

The District may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby ~~the~~ **competitors'** qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where ~~the~~ **price** is not used as a selection factor, can only be used ~~to procure in procurement of A/E professional services. The method~~ **it cannot be used to purchase other types of services provided by though A/E firms that** are a potential source to perform the proposed effort.

3. Noncompetitive Procurement

Procurement by noncompetitive proposals ~~allows for solicitation of a proposal from only one (1) source and~~ may be used only when one (1) or more of the following circumstances apply:

- a. ~~the aggregate amount of the procurement transaction does not exceed the micro-purchase threshold~~ **micro-purchases;**
- b. ~~the procurement transaction can only be fulfilled by~~ **the item is available only from** a single source;
- c. the public exigency or emergency for the requirement will not permit a delay resulting from ~~providing public notice of publicizing~~ a competitive solicitation;
- d. ~~the District requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District~~
- e. after ~~soliciting several~~ **solicitation of a number of** sources, competition is determined to be inadequate.

4. **(X) Noncompetitive Purchases Through Educational Service Centers (ESCs)**

Under State law, the Board may enter into a contract with an educational service center ~~("ESC")~~ **(ESC)** that authorizes the ESC to make purchases for supplies, materials, equipment, and services or the delivery of services on the District's behalf. These contracts promote operational efficiency and cost savings, and further enhance the educational experience for our students. Purchases made through such contracts are exempt from competitive bidding. **[DRAFTING NOTE: This provision applies to 3313.843, 3313.844, and 3313.845 contracts. A District with a student enrollment of less than 16k must enter into a contract with an ESC in accordance with R.C. 3313.843.]**

The District may apply for approval from ~~the Department of Education and Workforce ("DEW")~~ **ODE** to use a noncompetitive purchasing method to procure personnel-based services from an ESC only when the following criteria are met:

- a. the ESC posts a list of all services it provides, including costs of these services, on its website;
- b. the ESC has been designated as "high performing" by the ~~DEW~~ **Ohio Department of Education**; and
- c. ~~DEW~~ **ODE** as the pass-through state entity has determined that the ESC was substantially in compliance with all audit rules and guidelines during the most recent audit conducted by the Auditor of State.

The Treasurer/CFO will submit an application and any required documentation to ~~DEWODE~~ on the designated form requesting approval for use of a noncompetitive purchasing method for personnel services. Purchases will not be made until the application is approved. Notice of approval will be maintained by the Treasurer/CFO.

Domestic Preference for Procurement

~~The District should~~As appropriate and to the extent consistent with law, the District shall, to the extent practicable and consistent with law~~under a Federal award~~, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Such requirements shall be included in all ~~subawards, contracts, subawards including all contracts~~ and purchase orders ~~for work or products~~ under the Federal award.

Procurement of Recovered Materials

The District must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6962. These requirements include:

- A. procuring only items designated in the guidelines of the Environmental Protection Agency ("EPA") at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000;
- B. procuring solid waste management services in a manner that maximizes energy and resource recovery; and
- C. establishing an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

The District should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.

Contract/Price Analysis

The District shall perform a cost or price analysis ~~for every procurement transaction, including contract modifications, in excess of the Simplified Acquisition Threshold (currently \$250,000). The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the District should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the District must make independent estimates before receiving bids or proposals in connection with every procurement action in excess of \$250,000, including contract modifications.~~

A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements. The District must not use the "cost plus a percentage of cost" and "percentage of construction costs" methods of contracting.

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the District according to cost principle requirements.~~The method and degree of analysis are dependent on the facts surrounding the particular procurement situation; however, the District shall come to an independent estimate prior to receiving bids or proposals.~~

~~When performing a cost analysis, the District shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.~~

Time and Materials Contracts

The District uses a time-and-materials type contract only 1) after a determination that no other contract is suitable, and 2) if the contract includes a ceiling price that the contractor exceeds at its own risk. A time-and-materials type contract means a contract whose cost to the District is the sum of the actual costs of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

~~Because~~Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, the District sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, the District shall assert a high degree of oversight ~~in order~~ to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Suspension and Debarment

The District will award contracts only to responsible contractors ~~that possess~~possessing the ability to perform successfully under the terms and conditions of the proposed ~~contract~~procurement. All purchasing decisions shall be made in the best interests of the District and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, the District shall consider such factors as 1) contractor integrity; 2) ~~compliance with~~public policy; 3) ~~compliance~~; 4) ~~proper classification of employees~~; 5) record of past performance; and 6) ~~4~~ financial and technical resources.

~~The Superintendent shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. The District is subject to and shall abide by the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. Part 180.~~

~~Suspension is an action taken by the District that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 C.F.R. Chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 C.F.R. Part 180 Subpart G)~~

~~Debarment is an action taken by the Superintendent to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 C.F.R. Chapter 1). A person so excluded is debarred. (2 C.F.R. Part 180 Subpart H)~~

The District shall not subcontract with or award subgrants to any person or company that is debarred or suspended. For contracts over \$25,000, the District shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management, which maintains a list of such debarred or suspended vendors, at www.sam.gov; collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor. (2 C.F.R. Part 180 Subpart C)

Bid Protest

The District maintains the following protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the ~~awarding~~agency.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request For Proposals ~~("RFPs") (RFPs)~~ or the individual bid specifications package for resolution. Bid protests shall be filed in writing with the Superintendent within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Superintendent shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest or failure to file a formal written protest within the time prescribed shall constitute a waiver of proceedings.

Maintenance of Procurement Records

The District shall maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (including a cost or price analysis).

Records Retention

The District must retain all Federal award records for three (3) years from the date of submission of the final financial report, or as otherwise required pursuant to the Board-adopted records retention schedule, whichever is longer. For awards that are renewed quarterly or annually, the District must retain records for three (3) years from the date of submission of the quarterly or annual financial report, respectively, or as otherwise required pursuant to the Board-adopted records retention schedule, if longer. Records to be retained include, but are not limited to, financial records, supporting documentation, and statistical records. Other records retention requirements shall be in accordance with 2 C.F.R. 200.334 and the Board-adopted records retention schedule.

The District must collect, transmit, and store Federal award information in an open file, non-licensed, and machine-readable formats. The District may substitute electronic versions of original paper records through duplication or other forms of electronic conversion, provided that the procedures are subject to periodic quality control reviews. Quality control reviews must ensure that electronic conversion procedures provide safeguards against the alteration of records and assurance that records remain in a format that is readable by a computer system.

2 C.F.R. 200.317 - .326, Appendix II to Part 200

2 C.F.R. 200.334 - 200.336

2 C.F.R. 200.520

R.C. 3313.843 - 3313.846

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Legal

2 C.F.R. 200.317 - .326, Appendix II to Part 200

2 C.F.R. 200.334 - 200.336

2 C.F.R. 200.520

R.C. 3313.843 - 3313.846