

PROCUREMENT WITH FEDERAL GRANTS/FUNDS

Procurement of all supplies, materials, equipment, and services paid for with 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, and Board policy.

The Superintendent shall maintain a procurement and contract administration system in accordance with the “Procurement Standards” set forth in §§2 C.F.R. 200.317-.326 for the administration and management of federal grants and federally-funded programs. The District shall maintain a contract administration system 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 Uniform Grant Guidance Board policy.

Board employees, officers, and agents who have purchasing authority shall abide by the standards of conduct governing conflicts of interest and governing the actions of employees, officers, and agents engaged in the selection, award, and administration of contracts set forth in Board policy and Ohio Ethics Law. Specifically, no employee, officer, or agent of the District shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict 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 the firm selected for an award. The officers, employees, and agents of the District shall neither solicit nor accept gratuities, favors, or anything beyond nominal monetary value from contractors or parties to sub-agreements. Disciplinary action may be implemented for violations of this policy.

The District shall avoid acquisition of unnecessary or duplicative items. Consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. 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.

Contract Provisions

Procurement contracts shall, at a minimum, include the terms and conditions that are required by the applicable federal procurement regulations.

For spending related to the child nutrition program funds, contracts shall require the following clauses: termination for cause and convenience, contract work hours/safety standards, Davis Bacon Act provisions, rights to interventions made under a contract, debarment and suspension, and the Byrd Anti-Lobbying Amendment language. To the extent required by law, the District

shall require that the person awarded a contract satisfy the bonding requirements set forth in the applicable federal regulations.

The District and vendor shall comply with the Buy American Provision for all solicitations and contracts that involve the purchase of food, USDA Regulations (7 CFR Part 250 and 7 CFR Part 210). The vendor is required to utilize, to the maximum extent practicable, domestic commodities and products.

Administration

One or more District employees or contractors shall be delegated responsibility for the administration of all procurement contracts and for ensuring that the party awarded the contract satisfies the terms of the procurement contract.

Competition

All procurement transactions shall be conducted in a manner that encourages full and open competition. In order to ensure 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 bids or requests for proposals from competition for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding requirements;
3. Noncompetitive contracts to consultants that are on retainer contracts;
4. Noncompetitive pricing practices between firms or between affiliated companies;
5. Organizational conflicts of interest;
6. Specifying only a 'brand name' product instead of allowing for an "equal" product to be offered and describing the performance or other relevant requirements of the procurement;
7. Any arbitrary action in the procurement process.

The District shall not use statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except where an applicable

federal statute expressly mandates or encourages a geographic preference. When the District is contracting for architectural and engineering services, 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.

If the District uses a pre-qualified list of persons, firms or products to acquire goods and services, such list shall include enough qualified sources as to ensure maximum open and free competition.

Solicitation Language

All solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which 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 make a clear and accurate description of the technical requirements, a “brand name or equivalent” description 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 utilize one of the following methods of procurement:

1. **Micro-Purchases**

The aggregate dollar amount does not exceed the threshold established in 2 C.F.R. §200.67 or by the Office of Federal Financial Management, whichever is greater. To the extent practicable, the District will distribute such purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive bids if the Board considers the price reasonable.

2. **Small Purchases**

The aggregate dollar amount does not exceed the simplified acquisition threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 and in accordance with 41 U.S.C. 1908 (2 C.F.R. §200.88). Small purchase procedures

provide for relatively simple and informal procurement methods for securing services, supplies, and other property that does not exceed the competitive bid threshold. Small purchase procedures require that price or rate quotations shall be obtained from an adequate number of qualified sources.

3. Sealed Bids

Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment requires competitive bidding under Ohio law or Board policy, and when the aggregate dollar amount exceeds the simplified acquisition threshold set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 and in accordance with 41 U.S.C. 1908 (2 C.F.R. §200.88).

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 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 on the basis of price.

If sealed bids are used, the following requirements apply:

- A. Bids shall be solicited in accordance with the provisions of state law and Board policy. Bids shall be solicited from an adequate number of qualified suppliers, providing them 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, which will include product/contract specifications and pertinent attachments, must 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 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 shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken.

- E. The Board reserves the right to reject any or all bids for sound documented reason(s).

4. Competitive Proposals

Procurement by competitive proposal is normally conducted with more than one (1) source submitting an offer and either a fixed price or cost-reimbursement type contract is awarded. It is 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.

If this method is used, the following requirements apply:

- A. Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.
- B. Proposals shall be solicited from an adequate number of sources.
- C. The District shall use its written method for conducting technical evaluations of the proposals received and for selecting recipients.
- D. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
- E. The District may use competitive proposal procedures for qualifications based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

5. Noncompetitive Proposals

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- A. The item is available only from a single source
- B. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- C. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District
- D. After solicitation of a number of sources, competition is determined to be inadequate

Contract/Price Analysis

The District shall perform a cost or price analysis in connection with every procurement action in excess of the Simplified Action Threshold established in 2 C.F.R. §200.88, or by the Office of Federal Financial Management, whichever is greater, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation but 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 for each contract in which there is no price competition and in all cases where cost analysis is performed. 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 after a determination that no other contract is suitable if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the District is the sum of (1) the actual costs of materials; and (2) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

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 Board will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of the District. Consideration will be given to such matters as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (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 shall not subcontract with or award subgrants to any person or company who is debarred or suspended. In accordance with 2 C.F.R. §180.300, 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; collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor.

Bid Protest

The following procedure shall be used to resolve disputes relating to procurements.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request for Proposals (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 not be limited to 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).

Contracting with Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms

The District will take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms, as identified by the U.S. Department of Labor, are used, when possible. Affirmative steps will include:

1. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
2. Assuring that small and minority businesses and women’s business enterprises are solicited whenever they are potential sources;
3. Dividing 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. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women’s business enterprises;
5. Using 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. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in Sections (1) through (5) above.

LEGAL REFS.: 2 C.F.R. §§200.317 - .326

M-18-18, Implementing Statutory Changes to the Micro-Purchase and the Simplified Action Thresholds for Financial Assurance, Office of Federal Financial Management, June 20, 2018

Adopted: October 18, 2021