

POLICY GUIDE

Title: **PROCUREMENT:
FEDERAL AWARDS**

Adopted: _____

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POLICY NO. 607.1

PROCUREMENT: FEDERAL AWARDS

1. PURPOSE

The Board adopts this Policy to set forth the rules applicable to procurement using funds from federal awards.

To the extent that any relevant state or federal statute or Regulation governing procurement may at any time be amended, or any new relevant state or federal statute or Regulation governing procurement may at any time be promulgated, the same shall control regardless of any provisions of this Policy that cite state and federal statutes and Regulations as in place at the time of the Policy's adoption.

2. RESPONSIBILITY FOR PURCHASING

The Business Manager has the authority to initiate purchases, and is responsible for processing contracts and purchase orders. All bids and proposals must be approved by the Board of School Directors.

All requisitions for expenditures of federal funds shall be generated by the Federal Programs Coordinator, subject to approval by the Business Manager and the Superintendent, and the Board of School Directors when required.

3. PURCHASE METHODS

The District uses requisition forms as its standard procurement document. After a requisition is approved by the Business Manager and Superintendent, a purchase order is generated. Hard copies of purchase orders are maintained in the Business Office. The Business Manager and the Accounts Payable Clerk have access to the same.

All purchase orders/requisitions indicate a description of the services to be performed or goods to be delivered, location where the services are to be performed or to which goods are to be delivered, the dates of services or delivery, quantity, and price.

4. REQUIREMENTS: PROCUREMENT METHODS FOR USING FUNDS FROM FEDERAL AWARDS

A. Purchases Up to \$3,000.00 (Micro-Purchases)

Micro-purchases shall be used under the circumstances set forth herein. A micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate dollar amount of which does not exceed \$3,000, except when a different aggregate dollar amount is set forth under 2 C.F.R. Sections 200.67 and 48 C.F.R. Section 2.101 or any relevant successor statute or Regulation, and as periodically adjusted for inflation. (Note: It is presumed that it would be rare, if ever, that the micro-purchase threshold as set for a specific procurement using federal funds would be higher than \$10,000. However, to the extent that that a procurement using federal funds would ever exceed \$10,000, the requirements for obtaining competitive proposals or competitive bids, as applicable, as set forth under the Pennsylvania Public School of 1949, as amended, and District Policy No. 607, would apply to the specific types of procurement actions set forth in the School Code and in Policy No. 607, as cross-referenced in this Policy.)

The micro-purchase method is used in order to expedite the completion of the District's lowest dollar small purchase transactions and minimize the associated administrative burden and cost.

To the extent practicable, the District distributes micro-purchases equitably among qualified suppliers.

Micro-purchases may be awarded without soliciting competitive quotations if the District considers the price to be reasonable. The District maintains evidence of this reasonableness in the records of all micro-purchases.

B. Purchases In Excess of \$3,000

1. For the following purchases, small purchase procedures as set forth under 2 C.F.R. Section 200.320 shall be used:
 - a. purchases of or contracts for services, supplies or other property other than those listed at Paragraphs 2 and 3 immediately below, that exceed \$3,000 or any different amount set at any time as the micro-purchase threshold, up to \$150,000 or any greater amount that may be set for the simplified acquisition threshold under the relevant statute or Regulation;

OR

- b. purchases of or contracts for the items listed at Paragraphs 2 and 3 immediately below, that exceed \$3,000 or any different amount set at any time as the micro-purchase threshold, up to and including purchases in the amount of \$10,000, subject to annual adjustment in accordance with the provisions of the School Code and other prevailing law

Small purchase procedures are relatively simple and informal procurement methods, by which price or rate quotations must be obtained from an adequate number of qualified sources, pursuant to 2 C.F.R. Section 200.320.

2. For purchases of furniture, equipment, textbooks, school supplies and other appliances for the use of the District, beginning at a base amount of greater than \$10,000, subject to annual adjustment in accordance with the provisions of the School Code and other prevailing law, the requirements of Policy No. 607, Paragraph 2.A.1. or 2.A.2, relating to obtaining competitive quotations or bids, as applicable, as well as all applicable additional general requirements of Policy No. 607, shall control, pursuant to the Pennsylvania Public School Code of 1949, as amended.
3. For contracts pertaining to construction, reconstruction, repairs, maintenance or work upon any school building or property beginning at a base amount of greater than \$10,000, subject to annual adjustment in accordance with the provisions of the School Code and other prevailing law, the requirements of Policy No. 607, Paragraph 2.B.1. or 2.B.2, relating to obtaining competitive quotations or bids, as applicable, shall control, pursuant to the Pennsylvania Public School Code of 1949, as amended.
4. For purchases over \$150,000 or any different amount set at any time as the small purchase threshold, bidding shall be used under federal law, even if not otherwise required under the Pennsylvania Public School Code of 1949, as amended, as set forth in this Policy under Section 4, Paragraphs B.2. and B.3. Federal procurement requirements mandate that bids shall be publicly solicited and a firm fixed price contract (lump sum or unit price) shall be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

C. Noncompetitive Proposals (Sole Sourcing)

Where the District is not otherwise required by the School Code or federal procurement law to use a different procurement method, procurement by noncompetitive proposals through solicitation of a proposal from only one source may be used **only** when one or more of the following circumstances apply:

- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. (The foregoing notwithstanding, when bidding is required by the School Code, the

School Code provisions with respect to emergency exceptions from the bidding requirements shall apply; see Policy No. 607.)

- The item is available only from a single source;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or
- After solicitation of a number of sources, competition is determined inadequate.

D. Additional Requirements for Sealed Bids for Purchases Using Funds for Federal Awards

1. If sealed bids are used under Section 4, Paragraphs B. 2, 3 or 4 of this Policy, the following additional requirements apply:
 - Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids. The invitation for bids must be publicly advertised.
 - The invitation for bids, which will include any specifications pertinent attachments, must define the items or services in order for the bidder to properly respond.
 - All bids will be publicly opened at the time and place prescribed in the invitation for bids.
 - A firm fixed price contract award must be made in writing to the lowest responsive and responsible bidder.

To the extent not inconsistent with the requirements of the School Code and Policy No. 607, where specified in bidding documents, factors such as discounts, transportation costs, 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. Any or all bids may be rejected if there is a sound documented reason.

E. Contract/Price Analysis:

- (a) The District must perform a cost or price analysis in connection with every procurement action in excess of \$150,000, or any other amount that may at any time be set as the simplified acquisition threshold, except where a cost or price analysis would violate the competitive quotations or competitive bidding requirements of the School Code. 2 C.F.R. Section 200.323 (a). 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.
- (b) The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the Business Manager

must come to an independent estimate prior to receiving bids or proposals.

- (c) When performing a cost analysis, the Business Manager negotiates 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. 2 C.F.R. Section 200.323 (b)

F. Competitive Proposals

1. Competitive proposals shall generally be used when conditions are not appropriate for the use of sealed bids and when competitive bids are not otherwise required by the School Code and Policy No. 607. The technique of competitive proposals is normally conducted under federal law with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded.

If the type and monetary amount of the procurement at issue brings it within the category of items subject to mandatory quotations under the School Code and Policy No. 607, then at least three written competitive proposals indicating price must be obtained, subject to the exceptions set forth in the School Code, and all other requirements of the School Code and Policy No. 607 regarding obtaining competitive quotes shall apply, to the extent additional to or more stringent than the requirements under federal law for obtaining competitive proposals.

2. 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 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 through A-E firms though A-E firms are a potential source to perform the proposed effort.
3. If competitive proposals are used, the following requirements apply, to the extent not inconsistent with the School Code and other applicable state law:
 - Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.

- Proposals must be solicited from an adequate number of qualified sources. (But see also Paragraph F.1. above.)
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

G. General Procurement Standards for Purchases Using Funds From Federal Awards

1. To the extent not inconsistent with the School Code or other state law and Policy No. 607, the following additional general procurement standards under 2 C.F.R. Section 200.318 shall apply to all procurement using funds from federal awards, even when specific procurement procedures under the Pennsylvania Public School Code of 1949, as amended, and Policy No. 607 also apply:

(a) The District must maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

(b) The District's contracts shall contain the applicable provisions described in Appendix "II" to Part 200 - Contract Provisions for Non-federal Entity Contracts Under Federal Awards.

(c) Full and Open Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 C.F.R § 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

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

(b) Geographical Preferences Prohibited

The District must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) 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.

(c) Prequalified Lists

The District must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the District must not preclude potential bidders from qualifying during the solicitation period.

(d) Solicitation Language

The District must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must 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, must set forth those minimum essential characteristics and standards to which it must 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 must be met by offers must be clearly stated;

The District shall also ensure that solicitations identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) Avoiding Acquisition of Unnecessary or Duplicative Items

The District must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration is given to consolidating or breaking out procurements to obtain a more economical purchase, only to the extent the same may not be prohibited by the Pennsylvania Public School Code of 1949, as amended. And, where appropriate, an analysis must be made of leases versus purchase alternatives, and another other appropriate analysis 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.

(f) Use of Intergovernmental Agreements

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

(g) Use of Federal Excess and Surplus Property

Only to the extent the same may not be prohibited by the Pennsylvania Public School Code of 1949, as amended, the District considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(h) Debarment and Suspension

The District awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The District may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000 the District verifies that the vendor with whom the District intends to do business with is not excluded or disqualified. 2 C.F.R. Part 200, Appendix II(1) and 2 C.F.R. §§ 180.220 and 180.300.

(i) Maintenance of Procurement Records

The District must 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, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

(j) Time and Materials Contracts

The District may use 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. 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.

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, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the District must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) Settlements of Issues Arising Out of Procurements

The District alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the District of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

(l) Protest Procedures to Resolve Dispute

The District shall maintain protest procedures to handle and resolve disputes relating to procurements and, in all instances, disclose information regarding the protest to the awarding agency.

F. COOPERATIVE PURCHASING

The District is also authorized to engage in cooperative purchasing pursuant to District Policy No. 608, provided that all other procurement requirements of the Pennsylvania Public School Code of 1949, as amended, Policy No. 607, federal statutes and Regulations and this Policy are followed.

G. CHANGES IN PROCUREMENT THRESHOLD(S)

To the extent that any different required procurement threshold(s) shall apply at any time under applicable law or regulation, said threshold(s) shall override the threshold(s) set forth in this Policy.