

## Battle Creek Public Schools Board Policy No. 3661- Procurement - Federal Grants/Funds

This Policy applies only to procurement transactions using Federal financial assistance that the District receives directly or indirectly from a Federal awarding agency. The District must still otherwise comply with State law even if those requirements are more stringent than those promulgated by Federal law as described in this Policy.

Procurement of all supplies, materials, equipment, and services under a Federal award 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 maintain a procurement and contract administration system in accordance with the Federal regulations (2 CFR 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 documented purchasing and competitive bidding Policy 3660 and AG 3660-R.

For purposes of this Policy, all applicable terms shall be ascribed their respective meanings as defined by Federal regulation (2 CFR 200.1-99). In addition, any monetary threshold amount that is contained herein may be subject to periodic inflation adjustment promulgated by the relevant authority.

The District will avoid acquisition of unnecessary or duplicative items. Additionally, 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.

### **Conflict of Interest**

No employee, officer, or agent may participate in the selection, award, or administration of a contract governed by this Policy if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise, but is not limited to, 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 above-listed parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

All District employees, officers, and agents are prohibited from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Employees, officers, and agents may, however, accept an unsolicited gift of nominal value if otherwise in compliance with applicable laws. Employees, officers, and agents in violation of the conflict of interest provisions contained herein shall be subject to disciplinary action up to and including termination.

## **Competition**

All procurement transactions shall be conducted in a manner that encourages full and open competition and that is in accordance with good administrative practice and sound business judgment. In 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 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, 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 contracts to consultants that are on retainer contracts;
- D. Organizational conflicts of interest;
- E. Specification of only a "brand name" product instead of allowing for "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and
- F. Any arbitrary action in the procurement process.

Further, the District may not use statutorily or administratively imposed 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, the pre-qualified list must be current and include enough qualified sources to ensure maximum open and free competition. The District allows contractors to apply for consideration to be placed on the list as needed, including during any applicable solicitation period.

## **Solicitation Language**

The District shall identify all requirements which the contractor shall fulfill and all other factors be used in evaluating bids or proposals. The District shall also require that all solicitations 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 where 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.

## Procurement Methods

Subject to its continuing obligation to comply with applicable State law, the District shall utilize one of the following methods of procurement:

### A. Micro-Purchases

Procurement by micro-purchase is the acquisition of supplies—as defined in 2 CFR 200.94—or services, the aggregate dollar amount of which does not exceed \$3,000. See 2 CFR 200.67. To the extent practicable, the District must distribute 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 Superintendent shall be responsible for establishing micro-purchase procedures.

### B. Small Purchases

Small purchase procedures provide for relatively simple and informal procurement methods for securing services, supplies, and other property that do not exceed the competitive bid threshold of the State. Small purchase procedures may apply for procurements made under the applicable state bidding thresholds. The Superintendent shall be responsible for establishing small purchase procedures and may require that price or rate quotations be obtained from multiple qualified sources.

### C. Sealed Bids

Sealed competitive bids must be obtained when required by Michigan law and may be obtained in all other instances. Bids must be publicly solicited, and awards must be for a firm fixed price contract (lump sum or unit price). Awards must be made to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

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

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two (2) or more responsible bidders are willing and able to compete effectively for the business (or the District chooses to pursue sealed bids to comply with State law, rather than noncompetitive proposals, and only one (1) bidder responds); and
3. 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.

When sealed bids are used, the following requirements apply:

1. Bids shall be solicited in accordance with the provisions of State law and Policy 3660; provided that if there arises a discrepancy, then State law shall govern. Bids shall be solicited from an adequate number of qualified suppliers, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised.
2. The invitation for bids 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.
3. All bids will be opened at the time and place prescribed in the invitation for bids; 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 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.
5. The Board reserves the right to reject any or all bids for sound documented reason.

#### D. Competitive Proposals

Procurement by competitive proposal may be pursued when allowed by State law. It is normally conducted with more than one source submitting an offer and 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:

1. 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.
2. Proposals shall be solicited from an adequate number of sources.
3. The District shall use its written method for conducting technical evaluations of the proposals received and for selecting recipients.
4. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The District may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (AE) 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 AE professional services. It cannot be used to purchase other types of services though AE that firms are a potential source to perform the proposed effort.

#### E. Noncompetitive Proposals

Procurement by noncompetitive proposals may be pursued when allowed by State law. It 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:

1. The item is available only from a single source
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
3. The Federal awarding agency (2 CFR 200.37) or pass-through (2 CFR 200.74) entity expressly authorizes noncompetitive proposals in response to a written request from the District
4. After solicitation of a number of sources, competition is determined to be inadequate

#### **Small and Minority Businesses/Women's Business Enterprises**

The District must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

A "labor surplus area" generally refers to a civil jurisdiction that has at least a 10% unemployment rate for all civilian workers during a 24-month reference period, as determined by the Bureau of Labor Statistics. A civil jurisdiction also constitutes a "labor surplus area" if the civilian average unemployment rate during the 24-month reference period is 20% or more above the average annual civilian unemployment rate for all states during the same reference period, as determined by the Bureau of Labor Statistics. 20 CFR 654.5.

Affirmative steps, if applicable, shall include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- C. 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;
- D. 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
- E. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

### **Procurement of Recovered Materials**

The District and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 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; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **Contract/Price Analysis**

The District shall perform a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. See 2 CFR 200.88. 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 method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the District shall initially identify an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, and when permitted by applicable competitive bidding laws, 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**

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. The District may use a time and materials type contract only (1) if allowed by law, (2) after a determination that no other contract is suitable, and (3) if the contract includes a ceiling price that the contractor exceeds at its own risk.

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 possessing the ability to perform successfully under the terms and conditions of the proposed procurement. When making a purchasing decision, the District shall consider such factors as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.

The District is subject to and shall abide by the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689. 2 CFR 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 CFR 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 CFR 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 CFR Chapter 1). A person so excluded is debarred. (2 CFR Part 180 Subpart H).

The District shall not subcontract with or award subgrants to any person or company who is debarred or suspended. For contracts expected to equal or exceed \$25,000, the District shall confirm that the contractor 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 contractors at [www.sam.gov](http://www.sam.gov); collecting a certification from the contractor; or adding a clause or condition to the covered transaction with that contractor. (2 CFR Part 180 Subpart C).

### **Bid Protest**

The District maintains the following protest procedures to handle and 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. If there are no such notice or procedure requirements, bid protests shall be filed in writing with of 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 formal written protest within the time prescribed, shall constitute a waiver of proceedings. Nothing herein shall be interpreted to reduce or eliminate the District's rights or protections afforded under law.

## **Maintenance of Procurement Records**

The District maintains records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: technical specifications on proposed procurements, proposals or invitations for bids, rationale for the method of procurement, selection of contract type, contractor selection or rejection, independent cost estimates, and the basis for the contract price (including a cost or price analysis).

The District shall make these records available upon request from the Federal awarding agency or pass-through entity.

## **Bonding Requirements**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold currently set at \$150,000, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the District provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A. A bid guarantee from each bidder equivalent to 5% of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- B. A performance bond on the part of the contractor for 100% of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- C. A payment bond on the part of the contractor for 100% of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

## **Contract Provisions**

In addition to other provisions required by the applicable Federal agency, all contracts made by the District under the Federal award shall contain provisions covering the following, as applicable:

- A. Contracts for more than the Simplified Acquisition Threshold currently set at \$150,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the District including the manner by which it will be effected and the basis for settlement.

- C. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp, p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
  
- D. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by the District must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The District should place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The District must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “AntiKickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The District must report all suspected or reported violations to the Federal awarding agency.
  
- E. All contracts awarded by the District in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- F. If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp, p. 189) and 12689 (3 CFR part 1989 Comp, p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Applicable laws and regulations:  
2 C.F.R. 200.317-326