

PURCHASING

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

It is the goal of the Board to purchase competitively, without prejudice or favoritism, and to seek the maximum educational value for every dollar expended. Competitive bids or quotations shall be solicited in connection with purchases pursuant to law. The General Municipal Law requires that purchase contracts for materials, equipment and supplies involving an estimated annual expenditure exceeding \$20,000 and public work contracts involving an expenditure of more than \$35,000 will be awarded only after responsible bids have been received in response to a public advertisement soliciting formal bids. Purchases of the same commodity cannot be artificially divided for the purpose of avoiding the threshold. Similar procurements to be made in a fiscal year will be grouped together for the purpose of determining whether a particular item must be bid.

The district's purchasing activity will strive to meet the following objectives:

1. to effectively supply all administrative units in the school system with needed materials, supplies, and contracted services;
2. to obtain materials, supplies and contracted services at the lowest prices possible consistent with the quality and standards needed as determined by the Purchasing Agent in conformance with state law and regulation and in cooperation with the requisitioning authority. The educational and physical welfare of the students is the foremost consideration in making any purchase;
3. to ensure that all purchases fall within the framework of budgetary limitations and that they are consistent with the educational goals and programs of the district;
4. to maintain an appropriate and comprehensive accounting and reporting system to record and document all purchasing transactions; and
5. to ensure, through the use of proper internal controls, that loss and/or diversion of district property is prevented.

Opportunities shall be provided to all responsible suppliers to do business with the school district. Suppliers whose place of business is situated within the district may be given preferential consideration only when bids or quotations on an item or service are identical as to price, quality and other factors.

Where permitted by law, purchases may be made through available cooperative BOCES bids, or by "piggybacking" onto contracts of the United States or agencies thereof or the federal General Services Administration (GSA), the New York State Office of General Services (OGS), departments or agencies of New York State, any New York State county, or any state or any county or political subdivision or district therein, whenever such purchases are in the best interests of the district or will result in cost savings to the district. In addition, the district will make purchases from correctional institutions and severely disabled persons through charitable or non-profit-making agencies, as provided by law.

It is the district's responsibility to review each "piggybacking" contract corresponding to a proposed purchase, upon the advice of counsel as necessary, to determine whether the original contract does not conflict with state law or regulation, and meets the following requirements:

1. The contract must have been let by the United States, or any agency thereof, any state, or any other political subdivision or district therein;
2. The contract must have been made available for use by other governmental entities; including New York State local governments;
3. The contract must have been let to the lowest responsible bidder or on the basis of best value, in a manner consistent with General Municipal Law §103. Those main elements are: (a) public solicitation of bids or offers; (b) secure or confidential bids or offers; (c) use of a common standard for bidders or offers to compete fairly; and (d) awarded to the lowest responsible bidder, or responsible offeror of best value, which optimizes quality, cost and efficiency.

In accordance with law, the district shall give a preference in the purchase of instructional materials to vendors who agree to provide materials in alternative formats. The term "alternative format" shall mean any medium or format for the presentation of instructional materials, other than a traditional print textbook, that is needed as an accommodation for a disabled student enrolled in the district (or program of a BOCES), including but not limited to Braille, large print, open and closed captioned, audio, or an electronic file in a format compatible with alternative format conversion software that is appropriate to meet the needs of the individual student.

The Board is also aware of the need to reduce exposure of students and staff to potentially harmful chemicals and substances used in cleaning and maintenance. In accordance with law, regulation and guidelines set forth by the Office of General Services (OGS), the district will purchase and utilize environmentally sensitive cleaning and maintenance products in its facilities whenever feasible. Cleansers purchased must, first and foremost, be effective so that the district may continue to purchase non-green products as necessary. Environmentally sensitive cleaning and maintenance products will be procured in accordance with standard purchasing procedures as outlined in this policy and regulation.

In order to ensure that the district avails itself of advantageous purchasing opportunities, the Board authorizes the Purchasing Agent to represent the district in applying for federal programs designed to discount prices for goods and services. Specifically, the Purchasing Agent will abide by the rules and regulations associated with applying for telecommunications service discounts through the Universal Service Fund (E-Rate), in addition to complying with the local purchasing policies set forth by the Board. As with all purchasing activity, appropriate documentation of the application and purchase through any federal program will be maintained by the business office.

Competitive Bidding

Purchase contracts and public works contracts subject to competitive bidding will be awarded to the lowest responsible bidder, however, the Board authorizes that purchase contracts may be awarded on the basis of best value, as defined in State Finance Law §163. Other exceptions to competitive bidding are outlined below.

In addition, the Board authorizes the receipt of sealed bids for purchase contracts in electronic format, pursuant to the provisions of General Municipal Law §103(1) which addresses proper documentation, authentication, security, and confidentiality of electronic bids.

The district shall comply with the requirements of General Municipal Law §103-g, which prohibits, with few exceptions, competitive bidding contracts with entities that invest significantly in the Iranian energy sector, as outlined in the accompanying regulation.

Exceptions to Competitive Bidding

Competitive bidding, even if the dollar value of the purchase meets the threshold established above, is not required in the following circumstances:

1. emergencies where time is a crucial factor;
2. procurements for which there is no possibility of competition (sole source items);
3. professional services that require special skill or training (see policy 3333 for guidance on purchasing professional services);
4. purchases such as surplus or second-hand items from governmental entities, certain food and milk items, or goods and services from municipal hospitals ; or
5. where the district is purchasing through (or is “piggybacking” onto) the contract of another governmental entity, where the original contract complies with the requirements of New York State law for competitive bidding.

Purchasing when Competitive Bidding Not Required

Goods and services which are not required by law to be procured by the district through competitive bidding will be procured in a manner so as to ensure the prudent and economical use of public monies, in the best interests of the taxpayers, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption.

Alternative proposals or quotations will be secured by requests for proposals, written or verbal quotations or any other appropriate method of procurement, except as permitted by state law for procurements:

1. under a county contract;
2. under a state contract;
3. under a federal contract;
4. under a contract of another political subdivision;
5. of articles manufactured in state correctional institutions; or
6. from agencies for the blind and severely disabled.

“Piggybacking” onto the contract of other governmental agencies is permitted where the original contract is in conformance with the goals of this section.

The district will provide justification and documentation of any contract awarded to an offeror other than the lowest responsible dollar offeror, setting forth the reasons why such award is in the best interests of the district and otherwise furthers the purposes of section 104-b of the General Municipal Law.

General Purchasing Provisions

The Superintendent of Schools, with the assistance of the Purchasing Agent, shall be responsible for the establishment and implementation of the procedures and standard forms for use in all purchasing and related activities in the district. Such procedures shall comply with all applicable laws and regulations of the state and the Commissioner of Education.

No Board member, officer or employee of the school district shall have an interest in any contract entered into by the Board or the district, as provided in Article 18 of the General Municipal Law.

Comments will be solicited from those administrators involved in the procurement process before enactment of the district's policies regarding purchasing and from time to time thereafter. The policies must then be adopted by Board resolution. All district policies regarding the procurement processes will be reviewed by the Board at least annually.

The unintentional failure to fully comply with the provisions of section 104-b of the General Municipal Law or the district's policies regarding procurement will not be grounds to void action taken nor give rise to a cause of action against the district or any officer or employee of the district.

PURCHASES DIRECTLY CHARGED TO A FEDERAL AWARD

To the extent that its requirements are not already included in the District's Purchasing Policy or Regulations, the District will comply with the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 ("Uniform Guidance") when making purchases directly charged to a federal award.

As required by the Uniform Guidance, the following procurement standards and provisions apply only to procurements for goods and services that are directly charged to a federal award and are to be applied in addition to all other provisions set forth above in this Policy. These provisions do not apply to indirect costs.

GENERAL PROCUREMENT STANDARDS

- (a) The District will use its own documented procurement procedures which reflect applicable State and local regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
- (b) The District will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c) The District will maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or

administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. A conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the District may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct will provide for the possibility of disciplinary action for violations of such standards by officers, employees, or agents of the District.

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

(e) The District shall award 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.

(f) The District will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited, to the following: rationale for the method of procurement, selection of contract type, and/or contractor selection or rejection.

(g) (1) The District may use a "time and materials type contract" (to the extent permitted under its Purchasing Policy and Regulations) only after it determines that no other contract is suitable and provided that the contract includes a ceiling price that the contractor exceeds at its own risk. "Time and materials type contract" means a contract for which the cost to the District is the sum of:

i. The actual cost of materials; and

ii. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(h) The District alone shall be 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 pursuant to its contracts. The Federal awarding agency will not substitute its judgment for that of the District unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority with proper jurisdiction

B. COMPETITION

(a) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of this policy and applicable law. 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 will be excluded from competing for those 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; (3) Noncompetitive pricing practices between firms or between affiliated companies; (4) Noncompetitive contracts to consultants that are on

retainer contracts; (5) Organizational conflicts of interest; (6) 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 (7) Any arbitrary action in the procurement process.

(b) The District will 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. Nothing in this section preempts state licensing laws. 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) The District will have written procedures for procurement transactions. These procedures will ensure that all solicitations:

- i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features that 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, will set forth those minimum essential characteristics and standards to which it will 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 will be met by offers will be clearly stated; and
- ii. Identify all requirements which the offerors will fulfill and all other factors to be used in evaluating bids or proposals.

METHODS OF PROCUREMENT TO BE FOLLOWED

The District will utilize such methods of procurement appropriate for the purchase in question in accordance with its Purchasing Policy and Regulations, provided that the procurement methods conform to applicable standards in accordance with §200.320 of the Uniform Guidance.

CONTRACTING WITH SMALL AND MINORITY BUSINESSES. WOMEN'S BUSINESS ENTERPRISES (SMWBE) AND LABOR SURPLUS AREA FIRMS

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

(b) 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 paragraphs (1) through (5) of this section.

FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW

- (a) The District will make available, upon request of the Federal awarding agency or passthrough entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes that review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the District desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with the review usually limited to the technical aspects of the proposed purchase.
- (b) The District will make available upon request, for the Federal awarding agency or passthrough entity pre-procurement review, procurement documents (for example, requests for proposals or invitations for bids, or independent cost estimates), when required under the Uniform Guidance.
- (c) The District is exempt from the pre-procurement review in paragraph (b) above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of the Uniform Guidance.
 - 1) The District may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews will occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
 - 2) The District may self-certify its procurement system. Such self-certification will not limit the Federal awarding agency's right to survey the system. Under a selfcertification procedure, the Federal awarding agency may rely on written assurances from the District that it is complying with these standards. The District will cite specific policies, procedures, regulations or standards as being in compliance with these requirements and have its system available for review.

CONTRACT PROVISIONS

The District's contracts with respect to purchases charged directly to federal awards will contain the applicable provisions set forth in Appendix II to Part 200 ("Contract Provisions for NonFederal Entity Contracts Under Federal Awards").

Education Law sections 305(14), 1604, 1709, 1950, 2503, 2554 and 3602

General Municipal Law Articles 5-A and 18

8 New York Code of Rules and Regulations (NYCRR) Sections 170.2, 200.2(b)(10), 200.2(c)(2) and 200.2(i)

State Finance Law §§97-g(3), (4), (5); 163; 163-b; 165-a

County Law §408-a(2)

Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195)

Cross-ref: 6710, Purchasing Authority
6741, Contracting for Professional Services

Ref: Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195)
Education Law §§305(14); 409-i; 1604(29-a); 1709(4-a), (9), (14), (22); 2503(7-a); 2554(7-a)
General Municipal Law §§102; 103; 103-g; 104; 104-b; 109-a; 800 et seq.
State Finance Law §§97-g(3), (4), (5); 163; 163-b; 165-a
County Law §408-a(2)
8 NYCRR Part 114

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