

## PURCHASING REGULATION

The following sets forth the procedures for the procurement of goods and services by the district:

### I. Definitions

Purchase Contract: a contract involving the acquisition of commodities, materials, supplies or equipment

Public Work Contract: a contract involving services, labor or construction

### II. General Municipal 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. 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.

### III. Competitive Bidding Required

#### A. Method of Determining Whether Procurement is Subject to Competitive Bidding

1. The district will first determine if the proposed procurement is a purchase contract or a contract for public work.
2. If the procurement is either a purchase contract or a contract for public work, the district will then determine whether the amount of the procurement is above the applicable monetary threshold as set forth above.
3. In determining the need for competitive bidding, the aggregate amount to be expended during the fiscal year on an item or those of a similar nature (a "reasonable commodity grouping") must be considered. For example, office supplies or art materials would constitute an appropriate grouping for bidding purposes. In determining whether the dollar requirements have been reached, allowances for trade-in related to the purchase must be treated as an expenditure, as the estimated gross cost of the item is controlling. Net cost is relevant only to the determination of the low bid.
4. The district will also determine whether any exceptions to the competitive bidding requirements (as set forth below) exist.

#### B. Contract Combining Professional Services and Purchase

In the event that a contract combines the provision of professional services and a purchase, the district, in determining the appropriate monetary threshold criteria to apply to the contract, will determine whether the professional service or the purchase is the predominant part of the transaction, and use the procurement method that is authorized for the predominant part of the transaction.

C. Opening and Recording Bids; Awarding Contracts

The Purchasing Agent will be authorized to open and record bids. Contracts will be awarded to the lowest responsible bidder (as recommended by the Purchasing Agent), who has furnished the required security after responding to an advertisement for sealed bids.

D. Documentation of Competitive Bids

The district will maintain proper written documentation which will set forth the method in which it determined whether the procurement is a purchase or a public work contract. Proper written documentation will also be required when a contract is not awarded to the vendor submitting the lowest quote, setting forth the reasons therefore. A quote which exceeds the bid limit will be awarded only when such award is in the best interests of the district and otherwise furthers the purposes of section 104-b of the General Municipal Law. The district will provide justification and documentation of any such contract awarded.

E. Purchase of Instructional Materials

In accordance with Education Law, the district shall give a preference in the purchase of instructional materials to vendors who agree to provide materials in alternative formats (i.e., 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, including but not limited to Braille, large print, open and closed captioned, audio or an electronic file in an approved format.)

The district will establish and follow a plan to ensure that every student with a disability who needs his or her instructional materials in an alternative format will receive those materials at the same time that they are available to non-disabled students.

F. Leases of Personal Property

In addition to the above-mentioned competitive bidding requirements, section 1725 of the Education Law requires that the district will be subject to competitive bidding requirements for purchase contracts when it enters into a lease of personal property.

Documentation: The district will maintain written documentation such as quotes, cost-benefit analysis of leasing versus purchasing, etc.

Any legal issues regarding the applicability of competitive bidding requirements will be presented to the school attorney for review.

#### IV. Exceptions to Competitive Bidding Requirements

The district will not be subject to competitive bidding requirements when the Board of Education, in its discretion, determines that one of the following situations exists:

1. Emergency situations where:
  - a. the situation arises out of an accident or unforeseen occurrence or condition;
  - b. a district building, property, or the life, health, or safety of an individual on district property is affected; or
  - c. the situation requires immediate action which cannot await competitive bidding.

However, when the Board passes a resolution that an emergency situation exists, the district will make purchases at the lowest possible costs, seeking competition by informal solicitation of quotes or otherwise, to the extent practicable under the circumstances.

Documentation: The district will maintain records of verbal (or written) quotes;

2. When the district purchases surplus or second-hand supplies, materials or equipment from the federal or state governments or from any other political subdivision or public benefit corporation within the state.

Documentation: The district will maintain market price comparisons (verbal or written quotes) and the name of the government entity;

3. When the Board separately purchases eggs, livestock, fish and dairy products (other than milk), juice, grains and species of fresh fruits and vegetables directly from producers or growers. The amount expended in any fiscal year by the district may not exceed an amount equal to fifteen cents multiplied by the number of days in the school year multiplied by the total enrollment of the district.

Documentation: The district will maintain documentation consistent with sections 114.3 of the Regulations of the Commissioner of Education;

4. When the Board separately purchases milk directly from licensed milk processors employing less than forty (40) people. The amount expended in any fiscal year by the district may not exceed an amount equal to twenty-five cents multiplied by the

number of days in the school year multiplied by the total enrollment of the district or exceed the current market price.

Documentation: The district will maintain documentation consistent with section 114.4 of the Regulations of the Commissioner of Education;

5. When the district purchases goods, supplies and services from municipal hospitals under joint contracts and arrangements entered into pursuant to section 2803-a of the Public Health Law.

Documentation: The district will maintain the legal authorization, Board authorization and market price comparisons; or

6. When there is only one possible source from which to procure goods or services required in the public interest.

Documentation: The district will maintain written documentation of the unique benefits of the item or service purchased as compared to other items or services available in the marketplace; that no other item or service provides substantially equivalent or similar benefits; and that, considering the benefits received, the cost of the item or service is reasonable, when compared to conventional methods. In addition, the documentation will provide that there is no possibility of competition for the procurement of the goods.

7. On the basis of "best value." General Municipal Law Section 103 permits awarding purchase contracts in excess of \$20,000 on the basis of "best value", rather than on the basis of the lowest responsible bid. A Best Value Award is one that optimizes quality, cost and efficiency, typically applies to complex services and technology contracts, and is quantifiable whenever possible.

Documentation: The Board must adopt a resolution at a public meeting authorizing the award of bids based on "best value." Awards must be made on an individual basis and at a scheduled public board meeting.

8. Piggybacking. School Districts may purchase certain goods and services (apparatus, materials, equipment, and supplies) through the use of contracts let by the United States or any agency thereof, any state, and any county, political subdivision or district of any state. A school may "piggyback" on contracts let by outside governmental agencies in a manner that constitutes competitive bidding "consistent with state law".

This "piggybacking" is permitted on contracts issued by other governmental entities provided the original contract:

- a. Has been let by the United States or any agency thereof, any state or any other political subdivision or district therein;

b. Was made available for use by other governmental entities and agreeable with the contract holder; and

c. Was let in a manner that constitutes competitive bidding consistent with New York State law and is not in conflict with other New York State laws.

The procedures for letting the non-New York contract must be in harmony or general agreement with, and further the same principles as, the bidding requirements of General Municipal Law Section 102, which include:

- a. The proper solicitation of bids;
- b. Submission of sealed bids to secure and preserve the integrity and confidentiality of the process;
- c. The proper preparation of bid specifications;
- d. Award to the lowest bidder who materially or substantially meets the bid specifications and is determined to be a responsible bidder.

A school district may not piggyback upon a contract that was originally award on the basis of “best value.”

#### V. Quotes 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. Alternative proposals or quotations will be secured by requests for proposals, written or verbal quotations or any other appropriate method of procurement, as set forth below.

##### A. Methods of Documentation

1. Verbal Quotations: the telephone log or other record will set forth, at a minimum, the date, item or service desired, price quoted, name of vendor, name of vendor’s representative;
2. Written Quotations: vendors will provide, at a minimum, the date, description of the item or details of service to be provided, price quoted, name of contact. For example, with regard to insurance, the district will maintain documentation that will include bid advertisements, specifications and the awarding resolution. Alternatively, written or verbal quotation forms will serve as documentation if formal bidding is not required. “Requests for Proposals” (RFPs), documented in the same manner as described herein, may also be used;
3. Requests for Proposals: the district will contact a number of professionals (e.g., architects, engineers, accountants, lawyers, underwriters, fiscal

consultants, etc.) and request that they submit written proposals. The RFPs may include negotiations on a fair and equal basis. The RFPs and evaluation of such proposals will consider price plus other factors such as:

- a. the special knowledge or expertise of the professional or consultant service;
- b. the quality of the service to be provided;
- c. the staffing of the service; and
- d. the suitability for the district's needs.

The district will first locate prospective qualified firms by advertising in trade journals, checking listings of professionals, or making inquiries of other district or other appropriate sources.

The district will then prepare a well-planned RFP which will contain critical details of the engagement, including the methods which it will use in selecting the service.

B. Purchases/Public Work: Methods of Competition to be Used for Non-Bid Procurements; Documentation to be Maintained

The district will require the following methods of competition be used and sources of documentation maintained when soliciting non-bid procurements in the most cost-effective manner possible:

1. Purchase Contracts up to \$20,000
  - a. Contracts from \$100 to \$1,000: No action required.
  
  - b. Contracts in excess of \$1,000 to \$20,000: Three (3) formal written quotes obtained by School Business Official or requestor.
  
  - c. In excess of \$20,000. Public advertised bid or RFP in accordance with  
General Municipal Law.
  
2. Public Works Projects up to \$35,000
  - a. Less than \$5,000. No action required. Originator must substantiate the need and choice of contract.
  - b. \$5,001 - \$35,000. Three (3) formal written quotations obtained by the School Business Official.
  - c. In excess of \$35,000. Public, advertised bids.
  
3. Emergencies: Verbal quotes

Documentation will include notations of verbal quotes.

4. Insurance: Written quotes  
Documentation will include bid advertisements, specifications and the awarding resolution. Alternatively, written or verbal quotation forms will serve as documentation if formal bidding is not required. "Requests for Proposals" (RFPs), documented in the same manner as described herein, may also be used.
5. Professional Services: RFP  
Documentation will include written proposals.
6. Leases of Personal Property: Written quotes  
Documentation will include written quotes, cost-benefit analysis of leasing versus purchasing, etc. The district will note that the contract is a true lease and not an installment purchase contract.
7. Second Hand Equipment from Other Governments: Written quotes  
Documentation will include market price comparisons (verbal or written quotes) and the name of the government.
8. Certain Food and Milk Purchases: Written quotes  
Documentation will be consistent with sections 114.3 and 114.4 of the Regulations of the Commissioner of Education.
9. Certain Municipal Hospital Purchases: RFP  
Documentation will include the legal authorization, Board authorization, and market price comparisons.
10. Sole Source: Written or verbal quotes  
Documentation will include, among other things, the unique benefits of the patented item as compared to other items available in the marketplace; that no other item provides substantially equivalent or similar benefits; and that considering the benefits received, the cost of the item is reasonable, when compared to conventional methods. Notations of verbal quotes will be maintained by the district. In addition, the district will document that there is no possibility of competition for the procurement of the goods.

V. Quotes Not Required When Competitive Bidding Not Required

The district will not be required to secure alternative proposals or quotations for those procurements:

1. under a county contract;
2. under a state contract;
3. of articles manufactured in state correctional institutions; or

4. from agencies for the blind and severely disabled.

In addition, the district will not be required to secure such alternative proposals or quotations for:

5. emergencies where time is a crucial factor;
6. procurements for which there is no possibility of competition (sole source items);
7. procurements of professional services, which, because of the confidential nature of the services, do not lend themselves to procurement through solicitation;
8. very small procurements when solicitations of competition would not be cost-effective.
9. Second-hand equipment from another government agency;
10. Where “piggybacking” on contracts let by the United States or any agent thereof, any state, and any county, political subdivision or district of any state.

VI. Procurements from Other than the “Lowest Responsible Dollar Offeror”

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.

VII. Internal Control

The Board authorizes the Superintendent of Schools, with the assistance of the Purchasing Agent, to establish and maintain an internal control structure to ensure, to the best of their ability, that the district’s assets will be safeguarded against loss from unauthorized use or disposition, that transactions will be executed in accordance with the law and district policies and regulations, and recorded properly in the financial records of the district.

Under this internal control structure, the Superintendent of Schools and/or the Purchasing Agent must ensure that district employees are following all district purchasing policies and procedures.

Comments will be solicited from those administrators involved in the procurement process before enactment of the district’s regulations regarding purchasing and from time to time thereafter. The regulations must then be adopted by Board resolution. All district regulations 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 regulations regarding procurement will not be grounds to void action taken or give rise to a cause of action against the district or any officer or employee of the district.

VII. Construction Change Orders. All construction change orders proposed after a contract has been approved must be first reviewed and approved by the board before any additional work begins.

VIII. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

- (a) The non-Federal entity must 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 must 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.

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