

**SUBJECT: PURCHASING: VENDOR BUSINESS GUIDELINES**

- 1) Vendor, as defined for this regulation, includes any business, organization, or individual doing business with the School District; any of its organizations, or employees; and student organizations, approved to operate within the policies and regulations of the School District.
- 2) The Board shall not enter into contracts with vendors and/or sales representatives in which an individual Board member, school official or employee is in a position to benefit personally from the exercise of his/her official authority with respect to that contract. Any violation of this regulation would bar the vendor from doing business with the District.
- 3) For vendors of instructional materials, preference will be given to vendors who agree to provide materials in alternative formats (i.e., any medium or format, other than a traditional print textbook, for presentation of instructional materials that is needed as an accommodation for a student with a disability). Alternative formats include, but are not limited to, Braille, large print, open and closed captioned, audio or an electronic file in an approved format as defined in Commissioner's Regulations.
- 4) Apparel and Sports Equipment Purchases

Competitive Bidding Purchases

The Board of Education will only accept bids from "responsible bidders." A determination that a bidder on a contract for the purchase of apparel or sports equipment is not a "responsible bidder" shall be based upon either or both of the following considerations:

- a. The labor standards applicable to the manufacture of the apparel or sports equipment, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor; or
- b. The bidder's failure to provide information sufficient for the Board of Education to determine the labor standards applicable to the manufacture of the apparel or sports equipment.

Non-Competitive Bidding Purchases

The Board's internal policies and procedures governing procurement of apparel or sports equipment, where such procurement is not required to be made pursuant to competitive bidding requirements, shall prohibit the purchase of apparel or sports equipment from any vendor based upon either or both of the following considerations:

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- a. The labor standards applicable to the manufacture of the apparel or sports equipment, including but not limited to employee compensation, working conditions, employee rights to form unions, and the use of child labor; or
  - b. The bidder's failure to provide information sufficient for the Board of Education to determine the labor standards applicable to the manufacture of the apparel or sports equipment.
- 5) The District will maintain a list of responsible bidders, suppliers and vendors.
  - 6) The Business Office shall develop, maintain, and upon request provide the names of potential vendors and bidders for various types of materials, equipment, and supplies to schools and organizations.
  - 7) All staff and students will comply with the School District's procedures and applicable state law. Any building, department, program, or organization shall obtain quotations if required by District procedures.
  - 8) School facilities may be used by an outside or private vendor when such use satisfies a legitimate school purpose. Such practice may be authorized only upon:
    - a. Approval of the Superintendent or his designee,
    - b. The full and equal opportunity for all approved prospective users to compete,
    - c. The involvement of students in the process, and
    - d. Students are not compelled to participate.

**District Plan Regarding Alternative Formats for Instructional Materials**

As required by federal law and New York State Regulations, the District has adopted the National Instructional Materials Accessibility Standard (NIMAS) to ensure that curriculum materials are available in a usable alternative format for students with disabilities. Each school district has the option of participating in the National Instructional Materials Access Center (NIMAC). Whether a district does or does not participate in NIMAC, the district will be responsible to ensure that each student who requires instructional materials in an alternate format will receive it in a timely manner and in a format that meets NIMAS standards (8 NYCRR Section 200.2(b)(10)). The NYS Education Department (NYSED) recommends that school districts choose to participate in NIMAC, because this national effort to centralize the distribution of instructional materials in alternate formats will help guarantee timely provision of such materials to students.

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For school districts, Boards of Cooperative Educational Services (BOCES), State-operated schools, State-supported schools and approved private schools that choose to participate in NIMAC, **contracts with publishers executed on and after December 3, 2006** for textbooks and other printed core materials *must* include a provision that requires the publisher to produce NIMAS files and send them to the NIMAC (this will not add any cost to the contract).

For more information regarding NIMAC including model contract language, Steps for Coordinating with NIMAC and an IDEA Part B Assurances Application, see website: <http://www.vesid.nysed.gov/specialed/publications/persprep/NIMAS.pdf>

The District will establish a plan to ensure that instructional materials in a usable alternative format for each student with a disability (including students requiring Section 504 Accommodation Plans) are based upon the student's educational needs and course selections, and will be available at the same time as such instructional materials are available to non-disabled students.

"Alternative format" is defined as any medium or format for the presentation of instructional materials, other than a traditional print textbook, that is needed as an accommodation for a student with a disability enrolled in the School District, including but not limited to Braille, large print, open and closed captioned, audio, or an electronic file. An electronic file must be compatible with at least one alternative format conversion software program that is appropriate to meet the needs of the individual student.

The Plan shall:

- 1) Ensure that the District gives a preference in the purchase of instructional materials it has selected for its students to those vendors who agree to provide such instructional materials in alternative formats;
- 2) Specify, when an electronic file is provided, how the format will be accessed by students and/or how the District will convert to an accessible format;
- 3) Specify the process to be used when ordering materials to identify the needs of students with disabilities residing in the District for alternative format materials;
- 4) Specify ordering timelines to ensure that alternative format materials are available at the same time as regular format materials are available; and
- 5) Include procedures so that when students with disabilities move into the School District during the school year, the process to obtain needed materials in alternative formats for such students is initiated without delay.

**SUBJECT: PROCUREMENT GUIDELINES**

This resolution sets forth the guidelines to meet the requirements of General Municipal Law, Sections 103 and 104-b.

**Purpose**

Goods and services which are not required by law to be procured pursuant to competitive bidding must be procured in a manner so as to assure the prudent and economical use of public monies, in the best interest 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. To further these objectives, the governing Board has adopted internal policies and procedures governing all procurements of goods and services which are not required to be made pursuant to the competitive bidding requirements of General Municipal Law, Section 103 or any other general, special or local law.

**Procedures for Determining Whether Procurements are Subject to Bidding**

The procedures for determining whether a procurement of goods and services is subject to competitive bidding and determining that competitive bidding is not required by law is as follows:

- 1) The Board is required by law to award all purchase contracts for supplies, materials and equipment involving expenditures in excess of twenty thousand dollars (\$20,000) and all contracts for public works in excess of thirty-five thousand dollars (\$35,000) to the lowest responsible bidder after advertising for public sealed bids.
- 2) When a contract involves acquisition of both goods and services, a judgment must be made as to the primary purpose of the contract. If the services are minor, incidental or customarily provided by the vendor in connection with the goods purchased, the contract should be viewed as a purchase contract. If the service component is extensive or predominant or involves special skills, the contract should be treated as one for public works.
- 3) In determining the necessity 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.

Additionally, in determining whether the dollar requirements have been reached, allowances for any trade-in related to the purchase must be treated as an expenditure; the estimated gross cost of the item is controlling. Net cost is relevant only to the determination of the low bid.

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**SUBJECT: PROCUREMENT GUIDELINES (Cont'd.)****Best Value**

Effective January 27, 2012, General Municipal Law (GML) Section 103 was amended to permit a school district or BOCES to award purchase contracts in excess of twenty thousand dollars (\$20,000) on the basis of "best value", rather than on the basis of the lowest responsible bid. The Board of Education must adopt a resolution at a public meeting authorizing the award of bids based on "best value." The Board of Education may also approve "Best Value" bid award recommendations on an individual bid basis at a scheduled public meeting. 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.

**"Piggybacking" Law - Exception to Competitive Bidding**

On August 1, 2012, General Municipal Law (GML) Section 103 was amended to allow School Districts to 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. The amendment authorizes school districts and BOCES to "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 that the original contract:

- 1) Has been let by the United States or any agency thereof, any state (including New York State) or any other political subdivision or district therein;
- 2) Was made available for use by other governmental entities and agreeable with the contract holder; and
- 3) 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.

**Determining Consistency with General Municipal Law Section 103**

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 103, which include:

- 1) The proper solicitation of bids;
- 2) Submission of sealed bids to secure and preserve the integrity and confidentiality of the process;

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- 3) The proper preparation of bid specifications;
- 4) Award to the lowest bidder who materially or substantially meets the bid specifications and is determined to be a responsible bidder.

**NOTE:** The "piggybacking" amendment and the "best value" amendment may not be combined to authorize a municipality to "piggyback" onto a cooperative contract which was awarded on the basis of "best value." In other words, while a school district or BOCES may authorize the award of contracts on the basis of "best value", it may not "piggyback" onto a purchasing contract awarded by another agency on the basis of "best value."

**Guidelines for Purchasing Supplies and Equipment when Competitive Bidding is Not Required by Law**

<u>Estimated Amount of Purchase</u>	<u>Procedure/Requirements</u>	<u>Responsibility</u>
Less than \$1,000	No action required.	Not applicable
\$1,001 - \$20,000	Three (3) formal written quotations.	Obtained by the School Business Official or requestor.
In excess of \$20,000	Public advertised bid or RFP in accordance with General Municipal Law.	Obtained by the School Business Official or requestor.

- NOTE:**
- 1) For products available under State contract, which are below the State contract price, no further quotes are required provided the product is the same brand and model number and below the \$20,000 bid threshold. (Written memo must be provided to the Business Official).
  - 2) When procurement can be accomplished through the following sources, competitive bidding or procedure requirements listed above are not required.
    - a. Under State Contract;
    - b. Under a BOCES or County contract;
    - c. From State Correctional Institutions (Corrections Law Sections 184 and 186);
    - d. From State agencies for the blind and severely disabled (State Finance Law, Section 162);

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- e. Emergencies (General Municipal Law, Section 103[4]);
- f. Sole source, professional services, true leases and insurance;
- g. Second-hand equipment from another government agency.
- h. By "piggybacking" on contracts let by the United States or any agent thereof, any state, and any county, political subdivision or district of any state (General Municipal Law, Section 103[16]).

**Guidelines for Public Works Projects when Competitive Bidding is Not Required by Law**

<u>Estimated Amount of Purchase</u>	<u>Procedure/Requirement</u>	<u>Responsibility</u>
Less than \$5,000	No quotation required.	Originator must substantiate the need and choice of contractor.
\$5,001 - \$35,000	Three (3) formal written quotations.	Obtained by the School Business Official.
In excess of \$35,000	Public, advertised bids.	Obtained by the School Business Official.

**Annual Review**

Comments concerning the policies and procedures shall be accepted from employees of the Blind Brook-Rye Union Free School District involved in the procurement process from time to time.

The Board shall annually review these policies and procedures. The School Business Official shall be responsible for conducting an annual review of the procurement policy and for an evaluation of the internal control structure established to ensure compliance with the procurement policy.

**Unintentional Failure to Comply**

The unintentional failure to fully comply with the provisions of General Municipal Law, Section 104-b, shall not be grounds to void action taken or give rise to a cause of action against the Blind Brook-Rye Union Free School District or any officer or employee thereof.

**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.

**SUBJECT: COMPETITIVE PURCHASING OF GOODS AND SERVICES****General Statements**

The purchasing policy of the Blind Brook-Rye Union Free School District is to secure supplies, materials, equipment and services in an efficient, economical and timely fashion to meet the District's needs.

The purchasing procedures employed shall comply with all applicable laws and regulations of the State and Commissioner of Education.

**Authority/Responsibility**

In accordance with law, the District must identify the individual or individuals responsible for purchasing and their respective titles. Such information shall be updated biennially.

The District purchasing function will be centralized in the Business Office under the general supervision of the Purchasing Agent designated by the Board of Education. The Board of Education has designated the School Business Official as the Purchasing Agent for the School District. The Purchasing Agent shall be responsible for developing and administering the purchasing program of the School District.

**Quality**

The purchasing function shall consider circumstances and use as determining factors in quality selection. The Board of Education expects the purchasing agent to make every effort to receive the maximum educational value for every dollar expended.

Items commonly used in the various schools therefore shall be standardized whenever consistent with the educational goals and in the interest of efficiency and economy.

**Vendors and Contractors**

One of the purposes of the purchasing function is to purchase competitively, without prejudice or favoritism. Each order shall be placed on the basis of quality, price, delivery and past service being a factor if all other considerations are equal.

No Board member, officer or employee of the Blind Brook-Rye Union Free School District shall be interested financially in any contract entered into by the Board. This shall also preclude acceptance of any gratuities, financial or otherwise, by the above persons, from any supplier of materials or services to the District. The School District may, however, establish a geographical preference for the procurement of unprocessed, locally grown and raised agricultural products.

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**SUBJECT: COMPETITIVE PURCHASING OF GOODS AND SERVICES (Cont'd.)****Requesting Bids and Quotations**

The purpose of obtaining bids or quotations is to encourage competition in the procurement of supplies, equipment and services which will be paid for from public funds. Competitive bids or quotations shall be solicited in connection with all purchases whenever feasible and in the best interest of the Blind Brook-Rye Union Free School District.

Contracts will be awarded to the lowest responsible bidder; residence or place of business of the local bidders may be a consideration only in cases where identical bids have been submitted.

All purchase contracts for materials, equipment or supplies involving an annual expenditure of over twenty thousand dollars (\$20,000) and all public works involving an expenditure of more than thirty-five thousand dollars (\$35,000) will be awarded on the basis of public advertising and competitive bidding.

All contracts requiring public advertising and competitive bidding will be awarded by resolution of the Board.

A statement of "General Conditions" will be included with all specifications submitted to suppliers for their bids.

**Request for Proposal Process for the Independent Auditor**

In accordance with law, no audit engagement shall be for a term longer than five (5) consecutive years. The District may, however, permit an independent auditor engaged under an existing contract for such services to submit a proposal for such services in response to a request for competitive proposals or be awarded a contract to provide such services under a request for proposal process.

**Bid Opening**

Sealed bids should be received, time-stamped, recorded and kept in a safe place until the appointed day and time when they are publicly opened and read. It is important to note that the law requires SEALED BIDS; therefore, "FAXED" bids MAY NOT be accepted.

Bids should be checked and analyzed for compliance with specifications and law. The right to reject all bids for valid cause is reserved to the School District. Also reserved is the right to reject, for cause, any bid in whole or in part; to waive technical defects, qualifications, irregularities and omissions if in its judgment the best interests of the District will be served. Also reserved is the right to reject bids and to purchase items on State Contract if such items can be obtained on the same terms, conditions, specifications, and at a lower price.

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**SUBJECT: COMPETITIVE PURCHASING OF GOODS AND SERVICES (Cont'd.)****State Contracts**

Purchases shall be made through available State contracts of the Office of General Services Division of Standards and Purchase, whenever such purchases are in the best interest of the Blind Brook-Rye Union Free School District. However, whenever possible, if quotations can be obtained from suppliers locally at similar prices and equal quality to the State contract, then residence or place of business may be considered if all bidding conditions are met.

**Purchase Orders**

The Purchasing Agent shall be authorized to issue pre-numbered purchase orders for all goods and services where a budgetary appropriation has been made. When formal bidding procedures are required by law, the purchase order will be issued after the Board award of the bid and will refer to the bid submitted, to the specifications which will be attached as part of the contract and will bear the price or prices indicated by the bidder in the bid.

Blanket purchase orders issued yearly to local dealers shall be used only for day-to-day supplies, materials and other regularly recurring and planned purchases of the School System.

Purchase orders shall also indicate the address for delivery. All goods received must be accepted by an authorized Blind Brook-Rye Union Free School District employee who shall certify that the goods were received in good condition, before payment can be approved.

No payment for goods or services shall be made unless both an itemized invoice showing name of the person or firm to whom payment is due, and a receiving copy of the purchase order or written equivalent, bearing the signature of an authorized school employee are present. Furthermore, the invoice must have been issued in response to an approved purchase order.

**SUBJECT: CRITERIA FOR AWARDING CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER**

The award of public contracts is of vital interest to the taxpayers and citizens. Many state laws provide for award to the lowest responsible bidder in order to avoid favoritism and its concomitant evils. It would be unfair to bidders, who have expended time and money in the preparation of bids, to be denied equal consideration.

The basis of making awards to the lowest responsible bidder has been adopted with the view of enabling a public body to enter into contracts with the same efficiency and economy that a prudent business person does in the conduct of everyday business affairs. This beneficial result cannot always be obtained when the award goes to the lowest bidder. Definite specifications must be adopted to enable all bidders to make intelligent bids. This establishes a common standard by which to measure the respective bids to determine the lowest responsible bidder.

The New York Courts define the term lowest responsible bidder as one able to respond or answer in accordance with what is expected or demanded. More specifically, the lowest responsible bidder has been interpreted as requiring the successful bidder to possess:

- 1) Financial or procuring ability to complete the contract;
- 2) Integrity and trustworthiness;
- 3) Skill;
- 4) Judgment;
- 5) Ability to perform faithful and conscientious work;
- 6) Promptness;
- 7) Experience;
- 8) Previous performance of satisfactory work;
- 9) Other essential factors which may depend upon the type and kind of contract involved. For example, for vendors of instructional materials, preferences will be given to vendors who agree to provide materials in alternative formats. For apparel or sports equipment vendors, responsible bidders will be considered to be those that comply with fair and proper labor standards including those related to child labor, employee compensation, employees' rights to form unions, and working conditions.

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**SUBJECT: CRITERIA FOR AWARDING CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER (Cont'd.)**

On opening and tabulating the bids, the public official must determine two things to make a valid award:

- 1) The responsibility of the bidder;
- 2) Which of the responsible bidders has submitted the lowest bid.

Awarding a contract required to be let to the lowest responsible bidder is mandatory. No authority, except by statute, authorizes the official to accept any other bidder.

Determination of the responsibility of a bidder by the official requires the exercise of judgment and discretion in favor of the institution for which he/she works. This discretion must be exercised honestly and fairly, not arbitrarily nor capriciously. The decision must be based on facts obtained after investigation into the responsibility of the bidders which show that the lowest bidder to whom the award was not made was not a responsible bidder. Failure to make such an investigation invalidates the contract award and such award will not be upheld.

The lowest bidder who is not the lowest responsible bidder must prove that the investigation of the responsibility of bidders was not made or that such action was not the result of the exercise of honest and fair discretion in determining the responsibility of the bidders, but was arbitrary or capricious. The ultimate facts must be recorded.

It is the policy of the District to provide equal opportunities for awarding contracts regardless of race, color, creed, national origin, political affiliation, sex, sexual orientation, age, marital status, military status, or disability.