FEDERAL GRANT ADMINISTRATION: PROCUREMENT PROCEDURES

Regulation Code: ***NEW*** **8305-R**

This regulation applies to contracts for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are used, in whole or in part, to pay for the cost of the contract. Contracts funded with federal grant or loan funds will be procured in a manner that conforms with all applicable federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200), unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. In accordance with federal requirements, the school system will comply with the most restrictive procurement requirements of both federal and state law as well as local policies.

I. GENERAL PROCUREMENT STANDARDS

A. Decision to Procure

1. Necessity *[See 2 CFR 200.318(d).]*

The school system must avoid acquisition of unnecessary or duplicative items. **The Finance Officer** should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate and allowed by law, the **Finance Officer** shall perform an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

2. Cost or Price Analysis *[See 2 CFR 200.323.]*

A cost analysis or price analysis will be performed in connection with every procurement action in excess of the current simplified acquisition threshold ($250,000) including contract modifications. The school system will make an independent estimate before receiving bids or proposals, but the method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

The **Finance Officer** shall conduct the analysis. Analyses should include a review of prior contract costs, online reviews of similar products or services, and other market research.

Profit must be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be 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.

3. Evasion Prohibited

Procurements may not be divided to bring the cost under bid thresholds or to evade any requirements under this regulation or state or federal law.

B. Competition

1. Open Competition *[See 2 CFR 200.319(a).]*

All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition, and thus prohibited, 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.

In addition, 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 (RFPs) are excluded from competing for such procurements.

The **Finance Officer** is responsible for reviewing documentation for each procurement transaction to ensure the school system is in compliance with these requirements.

2. Geographic Preference *[See 2 CFR 200.319(b) and N.C. G.S. 143-64.31(a1).]*

Geographic preferences will not be granted in the evaluation of bids or proposals, unless applicable federal statutes expressly mandate or encourage geographic preference.

When contracting for architectural and engineering services, however, a North Carolina resident firm will be granted a preference over a nonresident firm if (1) the home state of the nonresident firm has a practice of granting a preference to its resident firms over North Carolina resident firms and (2) granting the preference still allows for an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. Any preference granted to a resident firm will be in the same manner, on the same basis, and to the same extent as the preference granted by the nonresident firm's home state. *[Though 2 CFR 200.319(b) prohibits geographical preferences, it specifically makes an exception for architectural and engineering services.]*

3. Historically Underutilized Businesses

The school system affirms the state's commitment to encourage the participation of historically underutilized businesses in purchasing functions. The school system will abide by all applicable local and state requirements regarding historically underutilized businesses as described in policies 6402, Participation by Historically Underutilized Businesses, and 9125, Participation by Minority Businesses. In addition, in accordance with the requirements of 2 CFR 200.321, the school system will take the following affirmative steps to facilitate the use of minority businesses, women's business enterprises, and labor surplus area firms, when possible:

• placing qualified small and minority businesses and women's business enterprises on solicitation lists;

• assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
• 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 (however, the procurement may not be divided to bring the cost under bid thresholds or to evade any requirements under this regulation or state or federal law);
• establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises;
• 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
• requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this subsection.

4. Prequalified Lists *[See 2 CFR 200.319(d).]*

Construction or repair projects may be subject to prequalification in accordance with policy 9115, Prequalification of Bidders for Construction Projects, only if there are enough qualified sources to ensure maximum open and free competition. Potential bidders will be permitted to prequalify during the solicitation period.

C. Bid Solicitations

1. Clear Specifications *[See 2 CFR 200.319(c).]*

The **Finance Officer** is responsible for ensuring that the solicitation incorporates a clear and accurate description of the technical requirements for the materials, products, or services to be procured. The description must not 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, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.

Solicitations must also include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals.

2. Fixed Price

Solicitations will state that bidders must submit bids on a fixed price basis and that the contract will be awarded on this basis, unless otherwise provided for in this regulation. Cost plus percentage of cost contracts are prohibited *[see 2 CFR 200.323(d)]*. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract will not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.

3. Notice of Federal Funding

All solicitations will acknowledge the use of federal funding for the contract and will inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award. All prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.

D. Contract Award

1. Responsible Contractors

All contracts will be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the contract. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources *[see 2 CFR 200.318(h)]*.

No contract shall be awarded to a contractor who is suspended or debarred from eligibility for participation in federal assistance programs or activities or who is ineligible to contract under state law.

2. Authorization to Enter into Contracts

Unless otherwise prohibited by law, board policy, or this regulation, the superintendent or designee is authorized to (1) enter into contracts or approve amendments to contracts for materials, equipment, supplies, or services involving amounts up to $5000.00, (2) enter into construction or repair contracts involving amounts up to $50,000.00 and (3) approve change orders involving additive or deductive sums up to $50,000.00 so long as funding for the change order is available within the established project budget. All other contracts must be reviewed by the board attorney and approved in advance by the board. To provide greater flexibility at the school level, the superintendent also may establish circumstances in which principals may enter contracts involving amounts up to $5,000.00. The superintendent, with appropriate involvement of the finance officer, shall establish any procedures necessary to ensure fiscal accountability and reporting by principals who enter into contracts.

3. Contract Requirements

All contracts paid for in whole or in part with federal funds must be in writing. The written contract must include or incorporate by reference the provisions required under 2 CFR 200.326 and as provided for under 2 CFR Part 200, Appendix II.

E. Contractor Oversight *[See 2 CFR 200.318(b).]*

The **Maintenance Director** shall maintain oversight to ensure that the contractor is performing in accordance with the contract terms, conditions, and specifications of the contract or purchase order.

F. Records *[See 2 CFR 200.318(i).]*

Records must be maintained by the **Maintenance Director** detailing the history of all procurements. The records must include the rationale for the method of procurement, selection of contract type,

contractor selection or rejection, and the basis for the contract price. All documentation relating to the award of any contract must be made available to the granting agency upon request.

II. SPECIFIC PROCUREMENT PROCEDURES

The **Maintenance Director** shall solicit bids in accordance with the requirements listed in this Section based on the type and cost of the contract. Prior to initiating any procurement activities, the **Maintenance Director** shall first thoroughly review all terms and conditions of the federal grant award and shall proceed only in accordance with such terms and conditions. If the **Maintenance Director** has any questions or concerns about the procurement process, he/she shall consult with the federal grantor agency and secure written confirmation of the applicability of the processes to be used.

A. Contracts for the Purchase of Goods

1. Contracts Costing No More Than $10,000.00

Contracts for purchases of goods (apparatus, supplies, materials, and equipment) that do not exceed the current micro-purchase threshold ($10,000.00) will be procured using the Uniform Guidance "micro-purchase" procedure (2 CFR 200.320(a)) and local standards.

The contract may be awarded without soliciting bids if the price of the goods is considered to be fair and reasonable; however, the board encourages that at least two bids or quotes be obtained, when feasible. Price, quality, suitability for specified need, and timeliness of delivery and performance should all be considered. Contracts should be made under conditions that foster competition among potential vendors. To the extent practicable, purchases must be distributed equitably among qualified vendors.

2. Contracts Costing Over $10,000 but Less Than $90,000

Contracts for purchases of goods (apparatus, supplies, materials, and equipment) that cost over the current micro-purchase threshold ($10,000 but less than $90,000 will be procured using the Uniform Guidance "small purchase" procedure (2 CFR 200.320(b)) and local standards.

Price or rate quotes will be obtained from an adequate number of qualified sources. A federal grantor agency may issue guidance interpreting "adequate number," so the terms and conditions of the grant award documents must be checked to determine whether specific guidance has been issued. Quotes may be solicited and submitted via telephone, fax, e-mail, or the North Carolina E-Procurement system. Telephone quotes must be placed in writing before a final contract will be awarded. Written quotations must be on the vendor's letterhead or an official quotation form.

Contracts will be awarded to the lowest responsive, responsible bidder on a fixed-price basis.

In lieu of the process described in this subsection, the school system may use competitive sealed bids as allowed for under informal bidding in policy 6430, Purchasing Requirements for Equipment, Materials, and Supplies.

3. Contracts Costing $90,000 or More

Contracts for purchases of goods (apparatus, supplies, materials, and equipment) costing $90,000 or more will be procured using a combination of the Uniform Guidance "sealed bid" procedure (2 CFR 200.320(c)) and state formal bidding procedures (N.C. G.S. 143-129).

The bid must be formally advertised in a newspaper that has general circulation in the area, by electronic means, or both. The advertisement must be posted at least seven full days before the date of the opening of bids. The advertisement must designate the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the board the right to reject any or all bids if there is a sound documented reason. Complete specifications or purchase description must be made available to all bidders.

All bids must be submitted sealed. Bids will be opened at the public bid opening on the date and time and at the location noticed in the public advertisement. A minimum of two bids must be received in order to open the bids.

The contract will be awarded to the lowest responsive, responsible bidder on a fixed-price basis. Any or all bids may be rejected if there is a sound documented reason.

4. Certain Information Technology Contracts

When the "sealed bid" procedure is not appropriate, contracts for information technology goods and services that would qualify for use of the RFP procedure pursuant to N.C. G.S. 143-129.8 may be procured using a combination of the most restrictive requirements of the Uniform Guidance "competitive proposal" procedure (2 CFR 200.320(d)) and N.C. G.S. 143-129.8. The **Finance Officer** shall secure prior approval from the federal grantor agency before using this type of procedure.

A request for proposals (RFP) will be formally advertised in a newspaper that has general circulation in the area the scope of work, general terms and conditions, specifications of the product needed by the school system, the application process, **AR Code: 8305-R**, by electronic means, or both. The advertisement must be posted at least seven full days. Proposals from an adequate number of qualified firms must be solicited. The RFP will identify the scope of work, general terms and conditions, specifications of the product needed by the school system, the application process, evaluation criteria, and the relative importance of each criteria (criteria weight).

All responses to the RFP will be considered to the maximum extent practical. The winning firm will be the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP. A group of individuals having knowledge of the specific area relating to the RFP will be formed and will evaluate bids based on a predetermined rubric. The three RFPs with the highest scores will then be considered by the group, who will then select the vendor. The selection process will be conducted within 15 days of the RFP deadline. The contract will be awarded on a fixed-price or cost-reimbursement basis.

5. Contracts for Supplies and Food for the School Nutrition Program

Contracts for supplies and food for the school nutrition program will be made in accordance with the school system's procurement plan for the school nutrition program.

B. Service Contracts (other than contracts for architectural and engineering professional services)

1. Contracts Costing No More Than $10,000

Service contracts (other than contracts for architectural and engineering professional services) that do not exceed the current micro-purchase threshold ($10,000) will be procured using the Uniform Guidance "micro-purchase" procedure (2 CFR 200.320(a)) and local standards.

The contract may be awarded without soliciting pricing or bids if the price of the service is considered to be fair and reasonable. However, contracts must be made under conditions that foster competition among potential providers, when feasible. To the extent practicable, contracts must be distributed equitably among qualified providers.

2. Contracts Costing Over $10,000 but No More Than $250,000

Service contracts (other than contracts for architectural and engineering professional services) that cost over the current micro-purchase threshold ($10,000) but do not exceed the current simplified acquisition threshold ($250,000) will be procured using the Uniform Guidance "small purchase" procedure (2 CFR 200.320(b)).

The **Finance Officer** shall obtain price or rate quotes from an adequate number of qualified sources. A federal grantor agency might issue guidance interpreting "adequate number," so the **Finance Officer** should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued.

Contracts will be awarded to the lowest responsive, responsible bidder on a fixed-price basis or not-to-exceed basis.

3. Contracts Costing More Than $250,000

Service contracts (other than contracts for architectural and engineering professional services) that cost more than the current simplified acquisition threshold ($250,000) will be procured using the Uniform Guidance "sealed bid" procedure (2 CFR 200.320(c)), unless the "competitive proposal" process as described in subsection II.B.4, below, is followed.

The bid solicitation must be publicly advertised for a period of time sufficient to give bidders notice of the opportunity to submit bids. The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained. Complete specifications must be made available to all bidders.

All bids must be submitted sealed. Bids will be opened at the public bid opening on the date and time and at the location noticed in the public advertisement. A minimum of two bids must be received in order to open the bids.

The contract will be awarded to the lowest responsive, responsible bidder on a fixed-price basis. Any and all bids may be rejected only for sound documented reasons.

4. Certain Contracts

Certain service contracts (other than contracts for architectural and engineering professional services) may be procured using the Uniform Guidance "competitive proposal" procedure (2 CFR 200.320(d)) when the "sealed bid" procedure is not appropriate for the particular type of service being sought. The **Finance Officer** shall secure prior approval from the federal grantor agency before using the competitive proposal procedure.

Under the competitive proposal procedure, the request for proposals (RFP) will be publicly advertised. The RFP will identify evaluation criteria and the relative importance of each criteria (criteria weight). Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an adequate number of qualified firms (a federal grantor agency may issue guidance interpreting "adequate number").

All responses to the RFP will be considered to the maximum extent practical. The winning firm will be the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP. The contract will be awarded on a fixed-price or cost-reimbursement basis.

C. Construction and Repair Contracts

1. Contracts Costing No More Than $10,000

Construction and repair contracts that do not exceed the current micro-purchase threshold ($10,000) will be procured using the Uniform Guidance "micro-purchase" procedure (2 CFR 200.320(a)) and local standards.

Soliciting bids is recommended, but not required, if the price of the goods or services is considered to be fair and reasonable. To the extent practicable, purchases must be distributed equitably among qualified suppliers.

2. Contracts Costing Over $10,000 but No More Than $250,000

Construction and repair contracts that cost more than the current micro-purchase threshold ($10,000) but do not exceed the current simplified acquisition threshold ($250,000) will be procured using the Uniform Guidance "small purchase" procedure (2 CFR 200.320(b)).

The **Maintenance Director** shall obtain price or rate quotes from an adequate number of qualified sources. A federal grantor agency might issue guidance interpreting "adequate number," so the **Maintenance Director** should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued. The quotes may be solicited and submitted via telephone, fax, or email. Telephone quotes must immediately be placed in writing. Written quotations must be on the contractor's letterhead or an official quotation form.

Contracts will be awarded to the lowest responsive, responsible bidder on a fixed-price basis or not-to-exceed basis.

3. Contracts Costing More Than $250,000 but Less Than $500,000

Construction and repair contracts that cost more than the current simplified acquisition threshold of $250,000 but less than $500,000 will be procured using the Uniform Guidance "sealed bid" procedure (2 CFR 200.320(c)).

The bid solicitation must be publicly advertised for a period of time sufficient to give bidders notice of the opportunity to submit bids. Formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid. The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained. Complete specifications must be made available to all bidders.

All bids must be submitted sealed. A 5% bid bond is required of all bidders *[see 2 CFR 200.325]*. Bids will be opened at the public bid opening on the date and time and at the location noticed in the public advertisement. A minimum of two bids must be received in order to open the bids.
The contract will be awarded to the lowest responsive, responsible bidder on a fixed-price basis. Any and all bids may be rejected only for sound documented reasons. Performance and payment bonds of 100% of the contract price are required of the winning bidder.

4. Contracts Costing $500,000 or More

Construction and repair contracts costing $500,000 or more will be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 CFR 200.320(c)) and state formal bidding procedures (N.C. G.S. 143-129).

The bid must be formally advertised in a newspaper that has general circulation in the area, by electronic means, or both. The advertisement must be posted at least seven full days before the date of the opening of bids. The advertisement must designate the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the board the right to reject any or all bids if there is a sound documented reason. Complete specifications or purchase description must be made available to all bidders.

All bids must be submitted sealed and in paper form. A 5% bid bond is required of all bidders. Bids will be opened at the public bid opening on the date and time and at the location noticed in the public advertisement. A minimum of three bids must be received in order to open all bids. A bid that does not include a bid bond cannot be counted toward the three bid minimum requirement.

The contract will be awarded to the lowest responsive, responsible bidder on a firm fixed-price basis. The board may reject any or all bids if there is a sound documented reason. Performance and payment bonds of 100% of the contract price are required of the winning bidder.

5. Additional Requirements for Contracts Costing $300,000 or More

For construction or repair contracts involving a building costing $300,000 or more, separate specifications will be drawn for the HVAC, electrical, plumbing, and general construction work as required under N.C.G.S. 143-128(a).In addition, the project will be bid using a statutorily authorized bidding method as required under N.C. G.S. 143-128(a1).

D. Contracts for Architectural and Engineering Services

1. Contracts Costing No More Than $250,000

All contracts for architectural and engineering services that do not exceed the current simplified acquisition threshold of $250,000 including those under $50,000, will be procured using the selection process described in subsection B.1 of policy 9110, Use and Selection of Architects, Engineers, Surveyors, and Construction Managers At Risk. Approval should be secured from the grantor agency before using this process. The contract must be in writing and include applicable Uniform Guidance contract provisions.

2. Contracts Costing Over $250,000

Contracts for architectural and engineering services that cost more than the current simplified acquisition threshold ($250,000) will be procured using the Uniform Guidance "competitive proposal" procedure (2 CFR 200.320(d)(5)).

A request for qualifications (RFQ) will be publicly advertised to solicit qualifications from qualified firms. Formal advertisement in a newspaper is not required. Price will not be solicited in the RFQ. The RFQ will identify the evaluation criteria and relative importance of each criteria (criteria weight). Proposals must be solicited from an adequate number of qualified sources (a federal grantor agency may issue guidance interpreting "adequate number").

All responses to the RFQ will be considered to the maximum extent practical. Qualifications of respondents will be evaluated to rank respondents and select the best qualified firm. It is required that the school system have a written method for conducting technical evaluations of the proposals received and for selecting recipients. The method should address, among other issues, the factors considered in the evaluation, what position performs the evaluation, the number of evaluations performed, the timeframe for conducting any evaluations and the selection of a vendor; and whether another position reviews the evaluation. Price will not be a factor in the selection of the most qualified firm.

Once the most qualified firm is selected, fair and reasonable compensation will be negotiated. If negotiations with the most qualified firm are not successful, negotiations will be repeated with the second-best qualified firm. The contract will be awarded to the best qualified firm with whom fair and reasonable compensation is successfully negotiated.

III. EXCEPTIONS

Non-competitive contracts are allowed only under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds.

A. Sole Source

A contract may be awarded without competitive bidding when the item is available from only one source. **The Finance Officer or Maintenance Director** shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the board.

B. Public Exigency

A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from competitive bidding.

C. Inadequate Competition

A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this regulation does not result in a qualified winning bidder.

D. Federal Contract

A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.

E. Awarding Agency Approval

A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.

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