Management Support

Purchasing: Bid Requirements and Contracts Procedures

The district is subject to both state and federal procurement laws for the acquisition of goods, services and public works projects. State laws govern the majority of procurement activity; however, where the procurement utilizes federal funding (in whole or in part) purchases must comply with Federal procurement regulations as well as applicable state procurement requirements.

The district will take necessary affirmative steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible, in compliance with 2 CFR § 200.321.

This procedure identifies the state and federal requirements for procurements at the various dollar thresholds identified by law.

"Purchase" means the school district's purchase per RCW 28A.335.190(2) of furniture, equipment, or supplies, except books, and is not applicable to contracts for Public Works. This section does not apply to the direct purchase of school buses by the district in accordance with RCW 28A.160.195 or Washington grown food per definition in RCW 15.64.060.

I. State Funding Procurement Furniture, Equipment or Supplies

Whenever the estimated cost of purchasing furniture, equipment, or supplies, except items exempted by law, equals or exceeds $75,000, the formal bid process described in these procedures must be followed. When the estimated cost of purchasing furniture, equipment, or supplies, except items exempted by law, equals or exceeds $40,000 but is less than $75,000, the Superintendent or designee will solicit quotes on a competitive basis, but does not have to go through the formal bid process. Solicitation of quotations will be requested through telephone, electronic or written means from at least three different vendors. Sources are recorded for public perusal. When the estimated cost of purchasing furniture, equipment or supplies are anticipated to cost under $40,000, except items exempted by law, obtaining competitive quotes are recommended but not required so long as pricing in the best interest of the district is obtained.

Brand names and manufacturer's catalog numbers used in specifications are for the purpose of identification and to establish a standard of quality. Bids on items determined by the district to be "equal" may be considered providing the bidder specifies brand and model, furnishes descriptive literature, and complies with any procedural requirements of the bid solicitation. The acceptance of alternative "equal" items will be conditioned on the district's determination that performance and quality are comparable to a specified item.

An acceptable bid and a district purchase order will constitute the only contract necessary for the purchase of furniture, equipment and supplies. The successful bidder will meet all conditions included in the specifications.

II. Federal Funding Procurement

A. Procurement of Goods Using Federal Funds

When federal funds are used for procurement of **goods** (furniture, supplies, equipment, and textbooks):

1. Purchases of $15,000 or less (or $40,000 or less if the district has completed the low-risk auditee self-certification process)do not require quotes. However, the District must consider price to be reasonable, and, to the extent practical, distribute purchases equitably among suppliers.
2. Purchases between $15,000 (or $40,000 if the district has completed the low-risk auditee self-certification process) and $75,000 must be procured using price or rate quotations from three or more qualified sources.
3. Purchases of $75,000 or more must be publicly solicited using sealed bids or request for proposals.
4. When the district uses federal funds for procurement of textbooks, the allowable self-certification is $50,000.

B. Procurement for Services using Federal Funds

When federal funds are used for procurement of **services**:

1. Services of $15,000 or less (or $50,000 or less if the district has completed the low-risk auditee self-certification process) do not require quotes. However, the District must consider price to be reasonable, and, to the extent practical, distribute purchases equitably among suppliers.
2. Services between $15,000 (or $50,000 if the district has completed the low-risk auditee self-certification process) and $350,000 must be procured using price or rate quotations from a reasonable number of qualified sources.
3. Services of $350,000 or more must be publicly solicited using sealed bids or request for proposals.

C. General Requirements

For all procurements using federal funds, the district will follow these additional guidelines:

1. To the extent practicable and consistent with law, the district will include in all contracts and purchase orders a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

2. When bids or competitive solicitation are required, the district will ensure that the requirements are not written in such a way as to prevent competition, such as specifying a name brand of an item.

3. The district will ensure that there are enough qualified sources to ensure maximum open and free competition, and that potential bidders are not unjustly precluded from bidding.
4. The district will perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold ($350,000) in accordance with 2 CFR 200 Subpart E.

III. Public Works

A. General:

Public Works projects are defined as work, construction, alteration, repair, or improvement of any amount executed at the cost of the district other than ordinary maintenance. Maintenance performed by purchase order or contract is subject to prevailing wage regulations. Public works projects not performed by the district's own forces will be awarded as follows:

Dollar Amount	Description	Procurement Method	Statutory Authority	Number of Quotes/Bids
Under $50,000	Public Work Projects	Quote	RCW 28A.335.190	1
Under $100,000	Public Works Projects	Quotes	RCW 28A.335.190	3 (where feasible)
Under $150,000	Public Work Projects	Small Works Direct Contracting may be used	RCW 39.04.152(b)	If 6 or more PWSBE[1] Certified contractors are on the applicable roster, the district must contract with one of the PWSBE certified contractors. If 5 or fewer PWSBE contractors are on the applicable roster, the district may contract with any contractor on the roster.
Under $350,000	Public Work Projects	Small Works Roster may be used	RCW 28A.335.190 and 39.04.152	All contractors on the applicable roster.
Over $350,000	Public Work Projects	Formal Bid Process must be used	RCW 28A.335.190	

[1] The Public Works Small Business Enterprise ("PWSBE") Certification Program is managed by the Office of Minority and Women's Business Enterprises.

1. Public Works Projects estimated to cost less than **$50,000** may be procured through an informal process, including negotiation/contracting with a contractor. The district is not required to utilize the Small Works Roster or Direct Contracting process.

2. Public Works Projects estimated to cost less than **$100,000** may be procured through a minimal competitive quotation process. The district will attempt to obtain at least (3) three quotes (where feasible) for such projects. The district is not required to utilize the Small Works Roster or Direct Contracting process.

3. Public Works Projects estimated to cost less than **$150,000** may be procured through the Direct Contracting process authorized by RW 39.152(4)(b) and described further in these procedures.

4. Public Works Projects estimated to cost **less than $350,000** may be procured through the Small Works Roster process authorized by RCW 39.04.152(4)(a) and described further in these procedures.

5. Public Works Projects estimated to cost in **excess of $350,000** will be awarded through the formal bid process described further in these procedures unless such projects are awarded through the alternative public works processes authorized by RCW 39.10.

B. Small Works Roster Process

RCW 39.04.151 and RCW 39.04.152 authorizes the district to use a Small Works Roster to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property with an estimated cost of $350,000 or less. The district will not break a project into units or phases in order to come within the scope of the Small Works Roster.

The district may (1) create its own Small Works Roster in accordance with the requirements of RCW 39.04.151(1); (2) utilize the statewide Small Works Roster established by RCW 39.04.151, maintained by the Municipal Research and Services Center (MRSC); or (3) utilize a Small Works Roster maintained by another agency provided that the lead agency implements the requirements of RCW 39.04.151 and RCW 39.04.152. An interlocal agreement or other contract between the two entities will identify the responsibilities of the lead agency to comply with the provisions of RCW 39.04.151 and RCW 39.04.152.

For Public Works projects estimated to cost less than $350,000, the district may solicit bids by telephone, electronic means and/or written quotations from contractors who have requested to be placed on the small works roster. The small works roster will be revised at least once each year by publishing a notice of such opportunity in at least one newspaper of general circulation in the district. Also, responsible contractors will be added to the small works roster any time they submit a written request and necessary records. The application form will be designed to collect the following: (1) name of contractor, (2) state of Washington contractor's license number, (3) bonding verification, (4) liability coverage, (5)

related contracts completed, and (6) references (bond and clients). Contractors desiring to be placed on or remain on the small works roster are required to keep current records of applicable licenses, certifications, registrations, bonding, and insurance on file with the district.

1**. Direct Contracting Process (Less than $150,000)**

For projects estimated to cost less than $150,000, as authorized by RCW 39.04.152(4)(b), the district may contract directly with contractors on an applicable Small Works Roster without a competitive process (the "Direct Contracting Process") as follows:

a. If (6) six or more PWSBE Certified contractors are on the applicable Small Works Roster, the district must contract directly with one of those PWSBE Certified contractors that indicated an interest in performing the work.

b. If (5) five or fewer PWSBE Certified contractors are on the applicable Small Works Roster, the district may contract directly with any contractor on the applicable roster.

If the district utilizes the Direct Contracting Process, it must rotate through the contractors on the applicable Small Works Roster and must, when qualified contractors are available to perform the work within the budget described, utilize different contractors on different projects. The district must also establish a small, minority, women, and veteran-owned business utilization plan, and notify small, minority, women, or veteran-owned businesses on the applicable roster when the Direct Contracting Process is utilized.

2. Small Works Bidding Process (Less than $350,000)

For projects estimated to cost less than $350,000, as authorized by RCW 39.04.152(4)(a), the district may utilize the small works bidding process as follows:

a. The district will prepare a project description that describes the work to be completed and the materials to be used. The completion date; contractor's assurances (prevailing wages, fair employment, etc.); bid and performance bond requirements; opportunity to visit the work site; closing date; and bid form may be provided. Detailed plans and specifications may or may not be included in the invitation;

b. The district will invite bids notifying all contractors on the applicable roster that have interest in performing work in the applicable geographical area;

c. After the closing time of when bids are due, electronic bids will be opened, recorded and made available for inspection or telephone inquiry; and

d. If an award is made, the district will award the contract to the lowest responsive and responsible bidder as defined in RCW 39.04.010.

C. Formal Bid Solicitation

Public Works projects estimated to cost in excess of $350,000 will be awarded through the formal bid process. The following procedures will be in effect for purchasing through the formal competitive bidding process, unless a purchase is otherwise exempted:

1. Complete plans and specifications will be prepared for all formal bid solicitations.

2. Notice will be given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks of the intention to receive bids and that specifications and other information is available to interested parties as required by law.

3. Brand names and manufacturers' catalog numbers used in specifications are for the purpose of identification and to establish a standard of quality. Bids on items determined to be "equal" may be considered providing the bidder specifies brand and model, furnishes descriptive literature, and complies with any procedural requirements of the bid solicitation. The acceptance of alternative "equal" items will be conditioned on the district's determination that performance and quality are comparable to a specified item.

4. For Public Works contract expected to exceed $1,000,000; the district will require the following and include the following requirements on the bid solicitation.

    a. That bidders within one hour after the published bid submittal time, submit the names of subcontractors who will perform the heating, ventilation, and air conditioning, plumbing and electrical work, or list the prime contract bidder to perform the work; and

    b. That bidders within forty-eight hours after the published bid submittal time, submit the names of subcontractors who will perform the work of structural steel installation and rebar installation.

    Failure to name a subcontractor or the bidder for each category of work renders such bids nonresponsive and therefore void. Naming more than one subcontractor for a category of work, except to the extent authorized in RCW 39.30.060, also voids such bids.

5. Formal bids will be opened at the time and place stated in the official advertisement for bids, and any interested member of the public may attend the bid opening. It will be the bidder's sole responsibility to see that such bid is delivered to the district prior to the time set for opening of bids. Any bid received after the time set for opening the bids will be returned to the bidder unopened and will not receive consideration by the district.

6. Bid results will be presented to the Board for consideration of award in a timely manner. Formal bid awards will be made by the Board on the basis of staff recommendations, to the lowest responsible bidder meeting the district's specifications.

7. If an award is made, the contract will be awarded to the lowest responsive and responsible bidder meeting the specifications. The following factors to be considered in determining the lowest responsible bidder in addition to cost include:

   a. The ability, capacity, and skill of bidder to perform the contract or provide the service required;
   b. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
   c. The ability of the low bidder to perform the work in the time specified;
   d. The quality of performance of previous contracts or services;
   e. The previous and existing compliance of the bidder with laws relating to Public Works;
   f. Such other information related to the performance of the contract as the Superintendent deems advisable; and
   g. Public Works projects are subject to the following responsibility criteria outlined in RCW 39.04.350 (1)
      - The bidder must have at the time of bid submittal, a certificate of registration in compliance with RCW 18.27.
      - The bidder must have a current state unified business identifier number.
      - If applicable, the bidder must have industrial insurance coverage for bidder's employees working in Washington as required in RCW 51, an employment security department number as required in RCW 50 and a state excise tax registration number as required in RCW 82.
      - The bidder must not be disqualified from bidding on any Public Works contract under RCW 39.06.010 or 39.12.065(3).
      - The bidder must not be in violation of apprenticeship requirements in RCW 39.04.320 and have not been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outline in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation.
      - The bidder must have received training on the requirements related to Public Works and prevailing wage under chapter 39.04 RCW and chapter 39.12 RCW. The bidder must designate a person or persons to be trained on these requirements. The training must be provided by the Department of Labor and Industries. Bidders that have completed three or more Public Works projects and have had a valid business license in Washington for three or more years are exempt from this requirement. The Department of Labor and Industries keeps records of entities that have satisfied the training requirement or are exempt and make the records available on its website.

- Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW (before award of contract, a bidder will submit to the district a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of this subsection.

h. In addition to the bidder responsibility criteria, the district may adopt relevant supplemental criteria in accordance with RCW 39.04.350(3) for determining bidder responsibility, applicable to a particular project with which the bidder must meet.

8. The district will reserve the right to reject any or all formal bids by Board resolution or waive minor informalities and make the award in its best interests, subject to applicable legal requirements.

D. Contracts

An acceptable bid and a district purchase order will constitute the only contract necessary for the purchase of supplies, equipment, and minor repairs or construction projects; except that the successful bidder will meet all conditions included in the scope of work and terms and conditions set forth in the solicitation documents. Formal written contracts will be prepared for all construction and repair projects exceeding $50,000 and for purchases as determined by district staff.

All contracts of $350,000 or more, and any multi-year contract anticipated to exceed $350,000, will be signed by the Superintendent or designee on behalf of the district after the contracts have been awarded by a majority vote of the Board with action recorded in the minutes of the Board meeting. All contracts will provide that, in the event of a suit by the district to enforce the terms of the contract, venue for the suit will be laid in the county in which the district is located and that, if the district is successful in the suit, the court may order reimbursement of the district's attorney's fees and court costs in such amount as the court deems reasonable. The contract will contain a proviso requiring the contractor to prohibit any of its employees who has ever been convicted of or pled guilty to any of the child-related felonies from working where he/she has contact with public school children. The contract will also provide that failure to comply with this requirement is grounds for immediate termination of the contract.

E. Prevailing Wage:

All Public Works contracts fall under the State Prevailing Wage Law, RCW Chapter 39.12. All contractors must comply with these requirements.

F. Bonds and Insurance:

Each contractor will provide a certificate of insurance and performance and payment bonds prior to commencing work for the district, except as may otherwise be authorized by RCW 39.08.030. Performance and payment bonds will be in the amount of 100 percent of the contract amount including sales tax, provided that, on projects estimated to costs $5,000 or less, performance and payment bonds are not required, and further provided that, on projects estimated to costs $150,000 or less, the contractor may request the district allow the use of the alternative arrangement for the withholding of 10% retainage in lieu of bonds until the later of (30) thirty days after final acceptance of the project, or until receipt of all necessary releases from the State Department of Revenue, Employment Security, and Labor & Industries, as authorized and subject to the conditions of RCW 39.08.010(3). The contractor will purchase a Commercial General Liability Insurance Policy that will protect the district and the contractor from claims which may arise out of or result from the contractor's operations. This insurance will be written for not less than the limits required by the districts' contract documents or $1,000,000, whichever is greater.

G. Retainage:

The district will not hold retainage on contracts or purchase orders under $10,000. For all other projects, the district will withhold 5% for retainage from the moneys earned by the contractor until the project is complete and work is accepted and/or required releases are obtained from the applicable governmental agencies. The district may accept a retainage bond for all or any portion of the contract retainage in a form acceptable to the district from a bonding company meeting the standards required by the district.

IV. Alternative Public Works:

GC/CM Contracting Procedure:

1. A GC/CM contract is a contract having a maximum allowable construction cost that is negotiated with a selected firm to provide services during the design phase of a project and to act as construction manager and general contractor during the construction phase of a project per RCW 39.10.210.

2. The GC/CM contracting procedure will be used if and when the Board makes the appropriate statutory determinations and gains the required approvals per RCW Chapter 39.10.

Design-Build Contracting Procedure:

1. A "design-build contract" is a contract between the district and another party in which the other party agrees both to design and build the facility, portion of the facility, or other item specified in the contract per RCW 39.10.

2. The design-build contracting procedure will be used if and when the Board makes the appropriate statutory determinations and gains the required approvals per RCW Chapter 39.10.

V. Cooperative Purchasing

In coordination with the Interlocal Cooperations Act, Chapter 39.34 RCW, the district may enter into cooperative purchasing agreements with other governmental entities or groups of governmental entities. These agreements may allow the district to purchase items using an existing agreement without going through the standard procurement bid requirements.

Prior to enactment of any agreement under this authority, the district will review the work of the governmental entity to ensure the following requirements are met:

1. The governmental entity conducted its own procurement process relating to the contract under consideration.
    a. The awarding entity must maintain adequate documentation on the procurement process for the contract under consideration.
    b. The awarding entity must have posted bid notice on a website maintained by a public agency, purchasing cooperative, or other service provider, or posted a link on the state's web portal.
    c. The contracting agency must ensure that it met any procurement requirements laid out in 2 CFR §200.317 – 200.327.

2. The contract language that it is open for use by other entities and does not expire.

3. The specifications laid out in the contract match the specification identified by the district. Any options that are agreed to in the contract are available to the district; any options that are not agreed to in the contract are not allowed.

4. Any cooperative agreement for public works projects contains the same specifications and that the scope of work is essentially the same for the district as for the contract's signatory district.

5. Ensure the cost is reasonable based on a cost/price analysis.

6. The district must verify that the awarding entity is neither suspended nor debarred from participating in federal assistance programs.

7. The district must also verify that the contract contains all contract provisions described in 2 CFR §200.327 and Appendix II to Part 200.

Once the district has completed these steps, it may enter into an agreement with the other entity to utilize their contract. The contract must be signed by both parties prior to any procurement taking place on the part of the district.

VI. Competitive Bidding Exemption Approval Process

The Board must determine via resolution the existence of an emergency exempting competitive bidding requirements, stating the factual basis for the emergency, no later than two weeks following the award of the contract.

The determination that any other bidding exemption condition exists will be first considered by the Executive Director of Business Services who may approve such other bidding exemptions up to $100,000 regardless of the funding source. Approval of bidding exemptions over $100,000 requires the approval of the Superintendent. If competitive bidding requirements are waived without a Board resolution, the contract and the factual basis for the exception must be recorded and made open to public inspection immediately following its award.

VII. Federal Agency or Pass-Through Entity Review

The district will maintain records of all purchases made using Federal funds and will provide any and all documentation to the Federal awarding agency or the state pass-through entity for compliance with all rules and regulations.

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