Director Procedure Number: G130
Title: Federal Fiscal Compliance – Procurement
Section: Finances

Federal Fiscal Compliance – Procurement

This document is intended to integrate standard School purchasing procedures with additional requirements applicable to procurements that are subject to the federal Uniform Grant Guidance regulations. The School maintains the following purchasing procedures, in accordance with federal and state laws, regulations and Board policy.

Responsibility for Purchasing

The Joint Operating Committee has outlined standard School purchasing responsibility, methods of purchasing, price quotations and bid requirements in Board Policy G109 (Purchases Subject to Bid) , G110 (Purchases Budgeted) and the accompanying administrative procedures.

Purchase Methods

When a request for purchase of equipment, supplies or services has been submitted and approved as outlined below, the procurement method to be used will be determined based on the total cost of the purchase as further outlined below. This procedure outlines how the cost thresholds for determining when the quote or formal bidding procedures that are required by state law as reflected in Policy G109 must be modified when making purchases for federally funded purposes to which the Uniform Grant Guidance regulations apply, so as to comply with both state and federal requirements. Final determination of which purchasing procedures are to be applied is delegated to the Business Manager or designee under the authority of the JOC.

Standard Procurement Documents and Purchase Request Process

The School shall use purchase orders and/or requisitions for purchase requests in accordance with the applicable purchase method.

The School shall use paper and/or electronic purchasing records, which are pre-numbered and accessible to designated purchasing staff.

Purchase requests must be submitted to a supervising administrator. Purchase of all items approved by the supervising administrator must be initiated by use of a purchase order or requisition submitted to the Business Manager or designee.

Purchase orders and requisitions shall contain information including, but not limited to:

1. Description of the services to be performed or goods to be delivered.
2. Location of where services will be performed or goods will be delivered.
3. Appropriate dates of service or delivery.

Documentation on purchase orders and requisitions shall be maintained in accordance with the School's Document Management Policy and retention schedule. (Pol. J101)

Contracts shall be reviewed by the Business Manager, Executive Director, and/or School solicitor prior to submission to the Joint Operating Committee for approval.

Contracts to which the Uniform Grant Guidance apply shall contain the clauses specified in Appendix II to 2 CFR Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), when applicable.

Micro-Purchases Not Requiring Quotes or Bidding (up to $3,500)

For purposes of this administrative procedure**, micro-purchase** means a purchase of equipment, supplies or services for use in federally funded programs using simplified acquisition procedures, the aggregate amount of which does not exceed a base amount of $3,500. The micro-purchase dollar threshold is adjusted periodically by the federal government, and the threshold most recently established and published in the Federal Register shall apply if other than $3,500. (48 CFR Subpart 2.1)

Note: The micro-purchase maximum for federal purposes is lower than the amount below which the School Code allows purchase for nonfederal purposes to be made without obtaining at least three (3) written or telephonic quotes or using formal competitive bidding.

The micro-purchase method is used in order to expedite the completion of its lowest dollar small purchase transactions and minimize the associated administrative burden and cost. Procurement by micro-purchase is the acquisition of equipment, supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

To the extent practicable, the School distributes micro-purchases equitably among qualified suppliers when the same or materially interchangeable products are identified and such suppliers offer effectively equivalent rates, prices and other terms. The Business Manager or designee will be responsible to determine the equitable distribution of micro-purchases.

Micro-purchases may be awarded without soliciting competitive quotations if the School considers the price to be reasonable. The School will maintain evidence of this reasonableness in the records of all micro-purchases. **Reasonable** means that sound business practices were followed and the purchase is comparable to market prices for the geographic area. Such determinations of reasonableness may include comparison of the price to previous purchases of the same item or comparison of the price of items similar to the item being purchased.

Even if the cost of a purchase qualifies it as a micro-purchase, bidding or small purchase procedures may be used optionally when those procedures may result in cost savings.

Small Purchase Procedures (between $3,500 and $19,400)

For purposes of this administrative procedure, **small purchase procedures** are those relatively simple and informal procurement methods for securing equipment, services, or supplies that cost more than the amount qualifying as a micro-purchase and do not cost $19,400 or more. Small purchase procedures cannot be used for purchases of equipment or supplies or for construction, repair or maintenance services costing $19,400 or more because the School Code requires formal competitive bidding at that level of cost.

The base amount at which bidding is required under state law is adjusted for inflation annually, and the amount most recently established and published in the Pennsylvania Bulletin shall apply if other than $19,400. (24 P.S. Sec. 120)

Because state law does not require bidding for the purchase of services other than construction, maintenance or repairs on school facilities regardless of total cost, small purchase procedures, including a request for proposal (RFP) procedure, may be used for procurement of such other services except when the estimated total cost will be at or over the federal threshold at which formal competitive bidding is required ($150,000).

If small purchase procedures are used, written or telephonic price or rate quotations are obtained from at least three (3) qualified sources and records of quotes are maintained as provided in Policy G109 and G110.

Formal Competitive Bidding ($19,400 or more)

Publicly Solicited Sealed Competitive Bids:

For purchases of equipment or supplies, or of services for construction, maintenance or repairs of school facilities, sealed competitive bids are publicly solicited and awarded to the lowest responsive and responsible bidder as provided in Policy G109 and G110 when the total cost is estimated to be $19,400 or more.

Note: The amount at which formal competitive bidding is required by federal regulations is much higher than the base amount at which the School Code requires competitive bidding. Therefore, the lower base amount specified by the School Code, as annually adjusted, is used to determine when bidding will be used for purchases of equipment or supplies, or for obtaining services for construction, maintenance or repairs on school facilities. (24 P.S. Sec. 120)

State law does not require bidding for the purchase of services other than construction, maintenance or repairs on school facilities regardless of total cost. For procurement of such other services for federally funded purposes to which the Uniform Grant Guidance applies, formal competitive bidding will be used when the estimated total cost will be at or over the federal threshold of $150,000.

The federal competitive bidding dollar threshold is adjusted periodically by the federal government, and the threshold most recently established and published in the Federal Register shall apply if other than $150,000. (48 CFR Subpart 2.1)

Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of. Any or all bids may be rejected if there is a sound documented reason.

Competitive Proposals

State law does not require public school entities to solicit competitive bids for services other than construction, repairs or maintenance of school facilities, for which competitive bidding is required if the cost will be a base amount of $19,400 or more. State law allows competitive proposals relating to work on facilities in lieu of bidding only in the context of guaranteed energy savings contracts.

Federal regulations allow the use of competitive proposals as an alternative when formal bidding would otherwise be required only to procure architectural and engineering services. Other types of services for federally funded purposes to which the Uniform Grant Guidance applies, professional or otherwise, must be procured using competitive bidding when the cost would meet or exceed the federal threshold for competitive bidding ($150,000).

In the case of services other than for construction, repairs or maintenance of school facilities costing less than that threshold, the School may use small purchase procedures or micro-purchase procedures as applicable based on total cost. A request for proposal (RFP) process can also meet or exceed the small purchase competition requirements under state law and Policy G109 and G110 for the acquisition of services other than for construction, repairs or maintenance of school facilities, and can be used if the total cost will be less than $150,000.

When permitted, the technique of competitive proposals is normally conducted with more than one (1) source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. Competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The School shall comply with other applicable state and federal law and regulations, Board policy and administrative procedures regarding purchasing; the School may consult with the School solicitor in determining the required process for purchasing through competitive proposals when necessary.

If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
2. Proposals must be solicited from an adequate number of qualified sources.
3. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Competitive proposals shall be evaluated by the Business Manager or designee based on factors including but not limited to: cost, experience of contractor, availability, personnel qualifications, financial stability, minority business, women's business enterprise, or labor surplus area firm status, project management expertise, and understanding of School needs.

Evaluations shall be completed in a timely manner, documented and shall be reviewed by the Business Manager or designee.

Contract/Price Analysis:

The School performs a cost or price analysis in connection with every procurement action in excess of $150,000, including contract modifications. (2 CFR Sec. 200.323(a)).

A **cost analysis** generally means evaluating the separate cost elements that make up the total price, while a **price analysis** means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the Business Manager or designee must come to an independent estimate prior to receiving bids or proposals. (2 CFR Sec. 200.323(a)). As part of the analysis, established business practices will be enacted which may include evaluation of similar prior procurements and a review process.

When performing a cost analysis, the Business Manager or designee negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is 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. (2 CFR Sec. 200.323(b)).

Noncompetitive Proposals (Sole Sourcing)

Procurement by noncompetitive proposals means procurement through solicitation of a proposal from only one (1) source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. An **emergency** exists whenever the time required for the Board to act in accordance with regular procedures would endanger life or property or threaten continuance of existing school classes.
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the School.
4. After solicitation of a number of sources, the School determines the competition is inadequate.

In addition to standard procurement policy and procedures, the School will document the grounds for using the noncompetitive method in lieu of an otherwise required competitive method of procurement, which may include written confirmation from the contractor as the sole source of the item. Documentation must be submitted to and maintained by the Business Office.

All noncompetitive proposals will ultimately be approved by the Joint Operating Committee. The School may utilize legal advice from the solicitor regarding noncompetitive proposals.

A cost or price analysis will be performed for noncompetitive proposals when the price exceeds $150,000.

Purchase Cards

The School approves the use of procurement cards for permissible purchases by designated employees to improve the efficiency of purchasing activities, reduce processing expenses, improve controls for small-dollar purchases, and streamline contractor payment.

Procurement cards may be used for purchases under federal programs.

Full and Open Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR Sec. 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Noncompetitive pricing practices between firms or between affiliated companies.
4. Noncompetitive contracts to consultants that are on retainer contracts.
5. Organizational conflicts of interest.
6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement.
7. Any arbitrary action in the procurement process.

EDGAR further requires the following to ensure adequate competition.

Minority Businesses, Women’s Business Enterprises, Labor Surplus Area Firms

The School must take necessary affirmative steps to assure that minority businesses, women’s’ business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (2 CFR Sec. 200.321)

1. Placing qualified small and minority business 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 purchasing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business 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.

6. Requiring the prime contractor, if subcontracts are let, to take the affirmative steps listed above.

Geographical Preferences Prohibited

The School must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Prequalified Lists

The School must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the School must not preclude potential bidders from qualifying during the solicitation period.

Solicitation Language

The School must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which 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; and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Avoiding Acquisition of Unnecessary or Duplicative Items

The School must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration must be given to consolidating or breaking out procurements to obtain a more economical purchase; and, where appropriate, an analysis must be made of leases versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

These considerations are given as part of the process to determine the allowability of each purchase made with federal funds. Such considerations are accessible in the administrative procedure attached to Policy G130: Allowability of Costs.

Use of Intergovernmental Agreements and Cooperative Purchasing

To foster greater economy and efficiency, the School enters into state and local intergovernmental agreements where appropriate for cooperative purchasing or use of common or shared goods and services, as permitted by the Intergovernmental Cooperation Act and the Commonwealth Procurement Code. (53 Pa. C.S. Ch. 23; 62 Pa. C.S. Ch. 19)

When procuring supplies or services for federally funded purposes to which the Uniform Grant Guidance applies, the School shall verify that the organization conducting the procurement pursuant to such agreements complies with the applicable requirements and standards of the Uniform Grant Guidance as outlined in this procedure.

Use of Federal Excess and Surplus Property

The School considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

Debarment and Suspension

The School awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The School may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over $25,000 the School verifies that the contractor with whom the School intends to do business is not excluded or disqualified. (2 CFR Part 200, Appendix II, and 2 CFR Sec. 180.220 and 180.300).

All successful contractors must provide written certification that they have not been suspended or debarred from federal projects. The Business Manager will be responsible for verification. Such verification may include accessing the online federal System for Award Management (SAM) to determine whether any relevant party is subject to any suspension or debarment restrictions.

Maintenance of Procurement Records

The School must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

Maintenance of records of procurement will be governed by Board Policy J101 Document Management and established administrative procedures.

Time and Materials Contracts

The School may use a time and materials type contract only: (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the School is the sum of: the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the School must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Settlements of Issues Arising Out of Procurements

The School alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the School of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Protest Procedures to Resolve Dispute

The School maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency. Protest procedures will be acted on in accordance with current state law and regulations, established School administrative procedures and the advice of the School solicitor.

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