No. 3310
SECTION: BUSINESS
TITLE: FEDERAL PROGRAMS PROCUREMENT POLICY

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OXFORD AREA SCHOOL DISTRICT

Purpose

The purpose of this policy is to ensure compliancy with the procurement standards related to federal programs identified under 200.318 through 200.326 of the Uniform Guidance issued by the Office of Management and Budget, and the procurement requests for National School Lunch, School Breakfast and special Milk Programs prescribed by the USDA where applicable.

Delegation of Responsibility

It is the responsibility of the Superintendent's designee or Business Manager to ensure compliance with the above regulations and the procurement policy of the entity (if applicable) for the purchase of goods and services within a federal grant. All documentation related to the procurement of goods and services should be kept on file within the Business Office. The goods and services procured should also be approved by the program personnel determining allowable activities and allowable costs under the program specific requirements including a certification that the purchase is no unnecessary or duplicate in nature.

Guidelines

I. Under general procurement standards of the Uniform Guidance, the non-federal entity (200.318):

   A. Must use documented procurement procedures which reflect applicable state, local and tribal laws and regulations, provided that the procurements conform to applicable federal law and the standards identified in this part.
   B. Must maintain oversight to ensure that the contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders. The following five allowable methods of procurement are defined in Section II A-E (200.320).
   C. Must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, aware and administration of contracts.
   D. Must avoid acquisition of unnecessary or duplicative items.
   E. To foster greater economy and efficiency and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

F. Is encouraged to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
G. Is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
H. Must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
I. Must maintain records sufficient to detail the history of procurement.
J. May use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.
K. Alone must be 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 evaluations, protests, disputes and claims.

II. The non-federal entity must use one of the following methods of procurements (200.320):

A. Micro-purchases of supplies and services $3,000 or less do NOT require quotes to be received. These procedures should expedite the completion of lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. Effort should be made to distribute evenly these purchases to qualified suppliers.
B. Small purchases from suppliers or other property and services in excess of $3,000 and do not exceed the simplified acquisition threshold do require quotes but NO pricing analysis. If used, price or rate quotations must be obtained from an adequate number of qualified sources. The simplified acquisition threshold is currently $150,000 and will be inflation adjusted periodically and could change in the future.
C. Sealed bids are required for purchases of $150,000 or greater. Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest price. The sealed bid method is the preferred method for procuring constructions, if the conditions below are met:

1. A complete, adequate and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and;
3. The procurement lends itself to a firm fixed priced contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are sued, the following requirements apply:

4. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local and tribal governments, the invitation for bids must be publicly advertized.
5. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
6. All bids must be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly.
7. A firm fixed price contract awarded will be made in writing to the lowest responsive and responsible bidder.

Where specified in binding documents, factors such as discounts, transportation costs 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.

D. Competitive proposals used for projects over $150,000 and may be fixed price or cost reimbursement. 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 request for proposals must be considered to the maximum extent practical.
2. Proposals must be solicited from an adequate number of qualified sources.
3. The non-federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
5. The non-federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and responsible compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms as a potential source to perform the proposed effort.

E. Non-competitive proposals (sole source) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

1. Item is only available from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity.
4. After solicitation of a number of sources, competition is determined inadequate. Follow Appendix II to Part 200 which has specific information for Equal Employment Opportunity, Davis Bacon Act, contract work hours, safety standards and debarment and suspension.

III. Contract cost and price (200.323)

A. The non-federal entity must perform a coast or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situations, but as a starting point, the non-federal entity must make independent estimates before receiving bids or proposals.
B. The non-federal entity must negotiate profit 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 must be given to the complexity of the 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.
C. Cost or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-federal entity under Subpart E-Cost Principles of the part. The non-federal entity may reference its own cost principles that comply with the federal cost principles.
D. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

IV. Competition (200.319)

All procurement transactions must be conducted in a manner providing full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work and invitation for bids or requests for proposals must be excluded from competing for such procurements. Some of the situation 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; and
7. Any arbitrary action in the procurement process.

The non-federal entity 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. The non-federal entity must also 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 non-federal entity must not preclude potential bidders from qualifying during the solicitation period.

The following procedures will be performed under the various procurement methods:

1. Micro-purchases will be distributed to qualified suppliers.
2. Small purchase procedures will be approved through the normal purchase order process.
3. Purchases over the simplified acquisition threshold will be procured through sealed bids or competitive proposals.
4. Noncompetitive proposals (sole sources) must meet all the requirements noted in the guidelines above.

V. Cost/Price Analysis

The entity will perform a cost/price analysis on all procurement action over the simplified acquisition threshold. 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 Superintendent's designee or Business Manager is responsible for developing this estimate prior to receiving bids or proposals. The backup for this estimate will be kept with other procurement documentation.

VI. Conflict of Interest

Conflict of interest statements will be completed and reviewed by the Superintendent's designee or Business Manager for any individual involved in the decision making process for procured goods and services. These statements will be completed in compliance with the entity's conflict of interest policy regarding federal awards. Any real or apparent conflict of interest should be documented in accordance with the conflict of interest policy.

VII. Suspension and Debarment

The entity may not subcontract with or award sub-grants to any person or company who is debarred or suspended. The Superintendent's designee or Business Manager is responsible for checking the excluded parties' list on sam.gov. Each solicitation of bid or proposal will also require a certification that the vendor is not debarred or suspended by the Federal Government.

VIII. Protest Procedures to Resolve Dispute

The entity will maintain protest procedures to handle and resolve disputes relating to procurements, and in all instances, disclose information regarding the protest to the awarding agency.