

POLICY TITLE: PROCUREMENT UNDER A FEDERAL AWARD

Federal Contract Administration – General

The Agency shall maintain the following oversight requirements to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

The Superintendent shall be responsible for ensuring that contracts for services are adequately fulfilled and completed prior to submission of requests for payment to the Board of Trustees.

In addition to its other policies and procedures regarding procurement, the Agency shall adhere to the following requirements when making procurements under a federal award. The Agency shall:

1. Ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be produced, and set forth those minimum essential characteristics and standards to which the material, product, or service must conform. The Agency will identify all requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals.
2. Prohibit the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering 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
3. Provide a written method for conducting technical evaluations of the proposals received and for selecting recipients, including factors considered for the evaluation; who 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.
4. Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
5. Avoid acquiring unnecessary or duplicative items;
6. Consider consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease

versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

7. Maintain a list of prequalified persons, firms, or products which are used in acquiring goods and services, and include enough qualified sources to ensure maximum open and free competition.
8. Award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the 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.
9. Maintain records sufficient to detail the history of procurement. These records will include:
 - A. Rationale for the method of procurement;
 - B. Selection of contract type;
 - C. Contractor selection or rejection; and
 - D. The basis for the contract price.
10. The use of a time and materials type contract is prohibited unless the Agency determines that no other contract is suitable. Time and materials type contract means a contract whose cost to a Agency is the sum of:
 - A. The actual cost of materials; and
 - B. The direct labor hours charged at 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. When this type of the contract is used, it will include a ceiling price that the contractor exceeds at his or her own risk. The Agency will assert a high degree of oversight over such contracts in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

11. The Agency will adhere to any additional procurement rules as applicable to specific federal programs, such as federal child nutrition programs.

Procurement under a Federal Award

In addition to the conflicts of interest outlined in Board Policy 7400, no employee, officer, or agent of the Agency may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such conflicts of interest include instances where any of the following has a

financial or other interest in or a tangible personal benefit from a firm considered for a contract:

1. The employee, officer, or agent;
2. Any member of his or her immediate family, including spouses, children, and parents;
3. His or her partner. For the purposes of this policy, "partner" shall mean an adult of the same sex or different sex with whom the employee, officer, or agent shares a non-marital intimate relationship and a common residence and with whom they mutually affirm that they share responsibility for each other's common welfare; or
4. An organization which employs or is about to employ any of the parties listed above.

The following activities are prohibited:

1. The purchase during the school day of any food or service from a Agency contractor or vendor for individual use;
2. The removal of any food, supplies, equipment, or school property without proper authorization;
3. Individual sales by Agency personnel of any school property, including used items; and
4. Evaluate bids or proposals that use statutorily or administratively imposed state, local, or tribal geographical preferences, except those cases where federal statutes expressly mandate or encourage geographic preference. In instances where the Agency is seeking architectural and engineering services, geographical location may be a selection criterion depending on the nature and size of the project

Cooperative Purchasing

The Agency may cooperatively enter into contracts with one or more Districts to purchase materials necessary or desirable for the conduct of the business of the Agency provided that the purchasing cooperative follows State purchasing and federal procurement requirements.

Mandatory Disclosure

Upon discovery of any potential conflict, the Agency will disclose in writing the potential conflict to the federal awarding agency in accordance with applicable federal awarding agency policy.

Use of Intergovernmental Agreements

To foster greater economy and efficiency, the Agency enters into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

Use of Federal Excess and Surplus Property

The Agency shall consider 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 Agency may not subcontract with or award sub-grants to any person or company that is debarred or suspended. For all contracts over \$25,000, the Agency shall verify that the vendor with whom the Agency intends to do business with is not excluded or disqualified. The Business Manager shall be responsible for verification by checking the excluded parties list on Sam.gov.

Settlement of Issues Arising Out of Procurements

The Agency 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 Agency 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 Agency maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

Violations

Any Agency officer, employee, or agent who violates this policy may be subject to disciplinary action, including but not limited to a fine, suspension, or termination. Violations of law will be referred to the local, State, or federal authority having proper jurisdiction.

Requirements and Restrictions for Procurement under a Federal Award - Competition

The following shall be required in the case of procurement under a federal grant to ensure adequate competition.

Geographical Preferences Prohibited

The Agency shall 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 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 Agency shall 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 Agency shall not preclude potential bidders from qualifying during the solicitation period.

Solicitation Language

The Agency shall 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 shall 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, shall 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 shall be clearly stated; and identify all requirements which the offers must fulfill and all other factors to be used in evaluating bids or proposals.

Procurement under a Federal Award – Non Sealed Bid

This procedure shall apply to purchases with federal funds not solicited through a sealed bid process.

Competitive Proposals

The technique of competitive proposals is normally conducted when more than one source submits an offer, and either a fixed price or cost-reimbursement type contract is to be awarded. It is generally used when conditions are not appropriate for the use of sealed bids. 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; and
3. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The Agency 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 reasonable compensation. This 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 though A/E firms are a potential source to perform the proposed effort.

Contract/Price Analysis

The Agency performs a cost or price analysis in connection with every procurement action in excess of \$50,000, including contract modifications. 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 Agency Superintendent must come to an independent estimate prior to receiving bids or proposals. 2 C.F.R. § 200.323(a).

When performing a cost analysis, the Agency Superintendent 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.

Noncompetitive Proposals (Sole Sourcing)

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. 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;
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Agency; or
4. After solicitation of a number of sources, competition is determined inadequate.

A cost or price analysis will be performed for noncompetitive proposals when the price exceeds \$50,000.

Full and Open Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 C.F.R §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 who 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.

LEGAL REFERENCE:

- I.C. § 18-1351 Bribery and Corrupt Practices – Definitions
- I.C. § 33-316 Cooperative Contracts to Employ Specialized Personnel and/or Purchase Materials
- I.C. § 33-402 Notice Requirements

I.C. § 33-601 Real and Personal Property – Acquisition, Use or Disposal of Same
I.C. § 67-2805 Procurement of Public Works Construction
I.C. § 67-2806 Procuring Services or Personal Property
I.C. § 67-2806A Request for Proposal
I.C. § 74-401 et seq. Ethics in Government
2 C.F.R. § 180.220 Are Any Procurement Contracts Included as Covered Transactions?
2 C.F.R. § 180.300 What Must I do Before I Enter into a Covered Transaction with Another Person at the Next Lower Tier?
2 C.F.R. §§ 200.300 *et seq.* Subpart D – Post Federal Award Requirements.
2 C.F.R. § 200.317 - .319; .323 Procurement by States
2 C.F.R. § 200.319 General Procurement Standards
2 C.F.R. § 200.319 Competition
2 C.F.R. § 200.320 Methods of Procurement to be Followed
2 C.F.R. § 200.323(b) Contract Cost and Price
2 C.F.R. Part 200, Appendix II(1) Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

POLICY HISTORY:

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