

SCHOOL DISTRICT OF THE MENOMONIE AREA

672.1

PROCUREMENT

Procurement of all supplies, materials, equipment, and services paid for from Federal funds and Non-Federal funds including any District matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, Board policies, and administrative procedures.

The District Administrator shall maintain a procurement and contract administration system in accordance with the USDOE requirements (2 D.F.R. 200.317-.326) for the administration and management of Federal grants and federally-funded programs. The District shall maintain a contract administration system that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of the District's documented general purchasing policy and administrative guidelines (Policy 6320 and AG 6320A).

All District employees, officers, and agents who have purchasing authority shall abide by the standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents engaged in the selection, award, and administration of contracts as established in Policy 672 - Purchasing, 672.2 – Cooperative Purchasing, and Policy 522.4 - Conflict of Interest.

The District will avoid acquisition of unnecessary or duplicative items. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase and, where appropriate, an analysis shall be made of lease 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.

To foster greater economy and efficiency, the District may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

Competition

All procurement transactions shall be conducted in a manner that encourages full and open competition and in accordance with good administrative practice and sound business judgment. In order to promote objective contractor performance and eliminate unfair competitive advantage, the District shall exclude any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competition for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- A. unreasonable requirements on firms in order for them to qualify to do business
- B. unnecessary experience and excessive bonding requirements
- C. noncompetitive contracts to consultants that are on retainer contracts
- D. organizational conflicts of interest

- E. specification of only a “brand name” product instead of allowing for an “or equal” products to be offered and describing the performance or other relevant requirements of the procurement
- F. any arbitrary action in the procurement process

Further, the District does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless (1) an applicable Federal statute expressly mandates or encourages a geographic preference; or (2) the District is contracting for architectural and engineering services, in which case geographical 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.

To the extent that the District uses a pre-qualified list of persons, firms or products to acquire goods and services, the pre-qualified list includes enough qualified sources as to ensure maximum open and free competition.

Solicitation Language

The District shall require 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 shall 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 shall be met by offers shall be clearly stated; and identify all requirements which the officers shall fulfill and all other factors to be used in evaluating bids or proposals.

The Board will not approve any expenditure for an unauthorized purchase or contract.

Methods of Procurement for Purchases Supported by Federal Funds

The District shall utilize the following methods of procurement:

A. Micro-purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$5,000.00 (not to exceed \$5,000.) To the extent practicable, the District shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive quotations if the District Administrator or Business Manager considers the price to be reasonable. The District maintains evidence of this reasonableness in the records of all purchases made by this method.

B. Small Purchases

Small purchase procedures provide for relatively simple and informal procurement methods for securing services, supplies, and other property that does not exceed the State statute competitive bid threshold of \$25,000, except as otherwise required by state law. Small purchase procedures require that price or rate quotations shall be obtained from three (3) qualified sources.

C. Sealed Bids

Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment which amounts to \$25,000 and when the Board determines to build, repair, enlarge, improve, or demolish a school building/facility the cost of which will exceed \$150,000, unless otherwise required by State law.

In order for sealed bidding to be feasible, the following conditions shall be present:

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

When sealed bids are used, the following requirements apply:

1. Bids shall be solicited in accordance with the provisions of State law and Policy 6320. Bids shall be solicited from an adequate number of qualified suppliers, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised.
2. The invitation for bids will include product/contract specifications and pertinent attachments and shall define the items and/or services required in order for the bidder to properly respond.
3. All bids will be opened at the time and place prescribed in the invitation for bids; bids will be opened publicly.
4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken.
5. The Board reserves the right to reject any or all bids for sound documented reason.
6. Noncompetitive proposals

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

- a. the item is available only from a single source
- b. the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
- c. the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District

d. after solicitation of a number of sources, competition is determined to be inadequate

Methods of Procurement for Purchases NOT Involving the Use of Federal Funds Subject to the Uniform Guidance Regulations

The parameters for methods of procurement apply when the District procures services, supplies, equipment, or other property and the expenditure does NOT involve the use of any federal funds that are subject to the Uniform Guidance Procurement regulations:

1. The District shall adhere to any other state or federal requirements that dictate the use of a certain procurement method for a particular purchase or contract.
2. When no separate state or federal requirement applies and the Board has not directed or approved a more specific procurement method for a particular purchase or contract, the Board directs its authorized employee and non-employee procurement agents to utilize the same procurement requirements as purchases supported by Federal funds as stated above.

Contract/Price Analysis

The District shall perform a cost or price analysis in connection with every procurement action in excess of \$150,000, 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 District shall come to an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, the District shall negotiate 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.

Time and Materials Contracts

The District uses 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 District 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, the District sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, the District shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Suspension and Debarment

The District will award contracts only to responsible contractors possessing the ability to

perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of the District and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, the District shall consider such factors as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.

The District Administrator shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. The District is subject to and shall abide by the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180.

Suspension is an action taken by the District that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 CFR Part 180 Subpart G)

Debarment is an action taken by the District Administrator to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred. (2 CFR Part 180 Subpart H)

The District shall not subcontract with or award subgrants to any person or company who is debarred or suspended. For contracts over \$25,000, the District shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management, which maintains a list of such debarred or suspended vendors at www.sam.gov; collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor. (2 CFR Part 180 Subpart C)

Bid Protest

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

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request For Proposals (RFPs) or the individual bid specifications package, for resolution. Bid protests shall be filed in writing with the office of the District Administrator within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the District Administrator shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

Maintenance of Procurement Records

The District maintains 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, and the basis for the contract price (including a cost or price analysis).

LEGAL REF.: 2 C.F.R. 200.317 - .326

CROSS REF.: 672, Purchasing
672.2, Cooperative Purchasing

APPROVED: June 10, 2019

/s/James Swanson
Clerk