

## **FEDERAL EDUCATIONAL FUNDS PROCUREMENT PROCEDURE**

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or School 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 of Directors policies, and administrative procedures.

In addition to applicable policies otherwise approved by the Board, the following policies shall apply when the School expends federal grant funds to purchase property or obtain services.

- A. **Competition.** To the extent required by law, the School shall use procurement methods that provide for full, free, and open competition and comply with the federal procurement regulations. The School shall award the contract to the party whose bid or proposal, after considering all appropriate facts, is most advantageous to the School if the School solicits bids or competitive proposals to secure property or services. The School shall avoid unnecessary restrictions on competition.

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

1. unreasonable requirements on firms in order for them to qualify to do business;
2. unnecessary experience and excessive bonding requirements;
3. non-competitive practices between firms or affiliated companies;
4. noncompetitive contracts to consultants that are on retainer contracts;
5. organizational conflicts of interest;
6. specification of a "brand name" product instead of allowing for an "or equal" product to be offered and describing the performance or other relevant requirements of the procurement; or
7. any arbitrary action in the procurement process.

Further, the School 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 School is contracting for architectural and engineering services, in which case 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.

- B. Solicitation Language: The School requires 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 offerors shall fulfill and all other factors to be used in evaluating bids or proposals. Solicitations for contracts that involve the purchase of food must include requirements to comply with the Buy American Provision, USDA Regulation (7 CFR Part 250 and 7 CFR Part 210).

- C. Procurement Procedures. To the extent required by law:

1. The School shall review any proposed procurement to avoid purchasing unnecessary or duplicative property or services. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase.
2. Before acquiring an item, the School shall compare the advantages of leasing versus purchasing property.
3. The School is encouraged to enter into inter-entity agreements where appropriate for the procurement or use of common or shared goods and services.
4. The School shall conduct a cost or price analysis in connection with every procurement transaction, including contract modifications.
5. The School shall ensure that its solicitations for goods and services contain the descriptions and provide the other information required under the applicable federal regulations.
6. The School shall attempt to ensure that the parties it contracts with are responsible and capable of fulfilling the terms of the contract. Consideration will be given to such matters as contractor integrity, compliance with public policy, price, quality, record of past performance, references, financial and technical resources, and management capabilities.
7. The School shall create and maintain records that document the procurement process that the School followed in each procurement transaction, including the rationale for utilizing the selected procurement method, the basis for awarding the contract, the justification for lack of competition if competitive bids or offers are not sought and the basis for award cost or price.
8. The School shall make its procurement records available for review by the appropriate federal officials. This includes keeping an original copy of all

invoices for goods and services for 3 years (in paper or electronic form, if supported), from the end of the year in which the expense was incurred.

- D. **Contract Provisions.** Procurement contracts shall, at a minimum, include the terms and conditions that are required by the applicable federal procurement regulations.

For spending related to the child nutrition program funds, contracts shall require the following clauses: termination for cause and convenience, Contract Work Hours/Safety Standards, Davis Bacon Act provisions, Rights to Interventions Made Under a Contract, Debarment and Suspension, and the Bryd Anti-Lobbying Amendment language. To the extent required by law, the School shall require that the person awarded a contract satisfy the bonding requirements set forth in the applicable federal regulations.

The School and vendor shall comply with the Buy American Provision for all solicitations and contracts that involve the purchase of food, USDA Regulation (7 CFR Part 250 and 7 CFR Part 210). The vendor is required to utilize, to the maximum extent practicable, domestic commodities and products.

- E. **Contract Administration.** The School shall delegate to one or more School employees or contractors the responsibility for the administration of all procurement contracts and ensuring that the party awarded the contract satisfies the terms of the procurement contract.

- F. **Small/Minority/Women Businesses.** To the extent possible, the School shall take affirmative steps in an attempt to contract with small businesses, minority-owned firms, and women's business enterprises. When required, the School will consult with appropriate sources such as the Small Business Administration or the Ohio Department of Administrative Services to find suppliers that may qualify. Affirmative steps may include:

- Placing qualified small and minority businesses and women's business on solicitation lists.
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where permissible, which encourage participation by small and minority businesses, and women's business enterprises.

## **Federal Grant Administration**

The School shall ensure that these procedures are followed with respect to all federal grant applications submitted by the School and all federal grants that are awarded to the School.

- A. Monitoring Grant Applications. The School shall delegate to one or more persons the responsibility for monitoring all pending federal grant applications, who shall provide the Board with a report on the status of all federal grant applications on a regular basis as needed.
- B. Monitoring Grant Expenditures. The School shall delegate to one or more persons the responsibility for monitoring federal grant expenditures, who shall provide the Board with a report on the expenditures made from each federal grant on a regular basis as needed.
- C. Final Expenditure Reports. The School shall delegate to one or more persons the responsibility for reviewing all final expenditure reports for each federal grant that the School was awarded, reconciling the report(s) with the School's financial records, and ensuring that the final expenditure report for each federal grant is complete and accurate.

## **CODE OF CONDUCT**

No employee, officer, or agent of the School shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the School shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, the School may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The School may take disciplinary action for violations of this code of conduct by its officers, employees, or agents.

## **MICRO-PURCHASES (\$1 - \$10,000) - No quotes required.**

Personnel authorized to make purchases for federally sponsored projects may take procurement actions of up to \$10,000 or such amount as may be set by the Federal Acquisition Regulation, in the aggregate, without documenting vendor quotes, if the School considers the price to be reasonable. Personnel are expected to exercise prudence; to keep the procurement guiding principles in mind; to observe ordinary procedures for purchase decisions and channels; and to take reasonable steps to secure cost-effective goods and services, including taking advantage of negotiated supplier contracts available to the School or other discounts. To the extent practicable, the School shall distribute micro-purchases equitably among qualified suppliers.

**SMALL PURCHASES \$10,001 TO \$250,000 (SIMPLIFIED ACQUISITION THRESHOLD) – Minimum three quotes**

The simplified acquisition threshold (\$250,000 or as updated in 41 USC §134) is established by the federal government to define when streamlined procurement processes can be used and when more formal competition is required.

For purchases in this range, a minimum of three price quotes from responsible vendors must generally be secured and documented. These quotes should be made by email, fax, or in writing; oral quotes are acceptable if other methods are not readily available or would unacceptably delay a time-sensitive procurement decision, but must be documented with a dated summary. All suppliers shall receive identical information. Solicitations must not restrict competition. In addition, the request for quotes shall include the following:

1. Written Specifications will be prepared and provided to the vendors.
2. Clear and accurate descriptions of the technical requirements for the product or service being procured as well as clear evaluation criteria.
3. Where applicable, the specifications must include a requirement that goods must be produced and processed in the United States.
4. Where applicable, the specifications must include a requirement that affirmative steps are taken to include small, minority, and women's businesses

In some situations, fewer than three quotes may be acceptable. If several qualified vendors were invited to submit quotes or proposals and only one or two did so, the procurement process may move forward using the available quotes. Sole source procurement may occasionally be acceptable, for instance when there is one known vendor who is uniquely qualified, or when a vendor who successfully competed for one stage of a project and performed to a high standard of quality and value may be invited to continue providing similar goods or services for the next stage of the project without a new quote or bid process.

A best-value analysis should be done. For standardized goods, the lowest price will generally be the best value. For non-standardized goods or professional services, a more complex analysis is appropriate and the lowest price may not represent the best value.

A procurement justification must be documented that includes, at minimum:

- The basis for selecting the vendor,
- The basis for the vendor's price, and
- How the purchaser knows the price is reasonable

If a contract will be signed as part of the procurement action, all applicable procedures and limitations shall be made in accordance with all applicable Federal, State, and local

statutes and/or regulations must be observed. Please note that no contracts may be signed with contractors that have relevant Exclusions listed on SAM.gov.

## **PROCUREMENTS ABOVE THE SIMPLIFIED ACQUISITION THRESHOLD**

For purchases above the simplified acquisition threshold (\$250,000 or as updated in 41 USC §134), a more formal and carefully documented competitive procurement process is required. The School should consult with financial and legal advisors to determine appropriate procedures for each procurement action at this level, in order to assure compliance with the requirements and limitations established in accordance with all applicable Federal, State, and local statutes and/or regulations.

## **TYPES OF CONTRACTS**

**Formal Contracts:** Purchases made through a formal procurement process such as sealed bids or competitive proposals.

**Competitive Sealed Bidding:** 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 in price

The Competitive Sealed Bidding method is the preferred method for procuring construction if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- More than one responsible bidder is willing and able to compete effectively, and
- The procurement lends itself to a firm fixed price contract and the selection of contractor can be made principally on the basis of price.

If Competitive Sealed Bidding is used, bids must be solicited to an adequate number of known suppliers, providing them with a sufficient amount of time to respond. Under the sealed bidding method of procurement, it is not necessary to conduct discussions with bidders in order to obtain the greatest value for the School, as the award is to be made to the lowest responsive and responsible bidder. The invitation for bids must be publicly advertised.

**Competitive Proposals (Negotiated Procurement):** Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

The Request for Proposals ("RFP") must be solicited to an adequate number of qualified sources. Any timely response to the RFP must be considered to the maximum extent practicable.

Evaluation of the proposals received must be accomplished in accordance with School procedures. Each proposal must be scored based upon the evaluation criteria contained in the RFP. Evaluation criteria must not be changed after receipt of offers.

Contracts must be awarded to the supplier whose proposal is the most advantageous to the program, with price and any other evaluation criteria considered.

**Procurement by Noncompetitive Proposals (Sole Source Contracting):** Procurement by noncompetitive proposals is procurement through the solicitation of a proposal from only one source and may be used only under specified circumstances.

Procurement through the solicitation of a proposal from only one source may be used **only** if one or more of the following circumstances apply:

1. The item or service 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 School.
4. After solicitation of a number of sources, competition is determined inadequate.

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

## **DEBARMENT AND SUSPENSION**

Suspension is an action taken by the School 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 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 School shall not contract or subcontract with or award sub grants to any person or company who is debarred or suspended. For contracts over \$25,000, the School 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](http://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 School 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 individual identified in the bid specifications package within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the designated individual 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 school administrator, or its designee 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, and the basis for the contract price (including a cost or price analysis). Records will be maintained for a period of 3 years.