

PURCHASING PROCEDURES

Note: Pursuant to A.S. 14.14.060 and 14.14.065, city and borough school districts may establish their own procedures for purchase of supplies and equipment. A.S. 14.08.101 empowers regional school boards to establish their own fiscal procedures, including the purchase of supplies and equipment. All contracts made under Federal awards must comply with the Office of Management and Budget's procurement procedures found in 2 CFR 200.317-326. A model internal procurement procedure reflecting the federal procedures can be found in E 3310. This model procedure may be modified and incorporated into existing policy as-desired. The following sample policy may be revised to reflect district practice and needs.

The School Board desires to ensure that maximum value is received for money spent by the district and that records are kept in accordance with law. The Superintendent or designee may issue and sign purchase orders.

No employee, officer, or agent of the District 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 a conflict of interest 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 or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-substantial gifts of nominal value may be accepted if the item is non-solicited.

(cf. 3300 - Expenditures/Expending Authority)
(cf. 3400 - Management of District Assets)
(cf. 3460 - Financial Reports and Accountability)
(cf. 9270 - Conflict of Interest)

Note: A.S. 36.15.050 establishes a preference for purchasing Alaskan agricultural and fisheries products. A.S. 14.03.085 makes school districts, except REAA's, subject to A.S. 29.71.050, which establishes a preference for purchasing recycled Alaska products.

The School Board encourages the selection of Alaskan products when such products meet the needs of the district and shall adhere to state law regarding purchasing preferences for Alaskan products.

(cf. 3311 - Bids)
(cf. 3312 - Contracts)

Note: A U.S. Supreme Court decision (City of Richmond v. J. A. Croson Co.) indicates that before enacting an affirmative action purchasing program, the district would have to have strong evidence of past district discrimination against minority contractors and the district's program would have to be narrowly tailored to accomplish its remedial purpose.

Legal Reference:

ALASKA STATUTES

14.08.101 Powers (Regional school boards)

14.14.060 Relationship between borough school district and borough

14.14.065 Relationship between city school district and city

14.17.190 Restrictions governing receipt and expenditure of money from public school foundation account

29.71.050 Procurement preferences for recycled Alaska products

36.30. State Procurement Code

37.05 Fiscal Procedures Act

CODE OF FEDERAL REGULATIONS

[2 C.F.R. 200.317-326, Procurement Standards](#)

City of Richmond v. J.A. Croson Co., 109 S.Ct. 706 (1982)

Reviewed 4/07, 3/1/17

PROCUREMENT

Note: This exhibit is a model procurement procedure that may be adopted by the District business office. It includes procurement procedures required by the Office of Management and Budget for contracts made under Federal awards, found in 2 CFR 200.317-326. **Contracts made under Federal awards must contain procedures comparable to those described in this Exhibit**, as well the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. A copy of this appendix is found at the end of this Exhibit. The procedures in this Exhibit may be modified so long as the District adopts procedures that meet the requirements of 2 CFR 200.317-326. **The procedures in this Exhibit are not mandatory for contracts not made under Federal awards.** These procedures may be modified as necessary to address District needs.

Competition

All procurement transactions under Federal awards 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, 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; and
- (7) Any arbitrary action in the procurement process.

The District must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. However, detailed product specifications should be avoided if at all possible. 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.

PROCUREMENT (continued)

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.

Minority Bidding

When procuring contracts under Federal awards, the District must take affirmative steps to utilize minority businesses, women’s business enterprises, and labor surplus area firms when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses 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 requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, 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; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Contract Cost

The District must perform a cost or price analysis in connection with every procurement action under Federal awards 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 situation, but as a starting point, the District must make independent estimates before receiving bids or proposals.

The District 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 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.

PROCUREMENT (continued)

Costs 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 under Federal law. The District may reference its own cost principles that comply with the Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Methods of Procurement

The District must use one of the following methods for procurement under Federal awards:

- (a) Procurement by micro-purchases: Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold in 2 CFR §200.67. To the extent practicable, the District must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the District considers the price to be reasonable.
- (b) Procurement by small purchase procedures: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- (c) Procurement by sealed bids (formal advertising): 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 sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

 - a. In order for sealed bidding to be feasible, the following conditions should be present:

 - i. A complete, adequate, and realistic specification or purchase description is available;
 - ii. Two or more responsible bidders are willing and able to compete effectively for the business; and

PROCUREMENT (continued)

- i. 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.
 - b. If sealed bids are used, the following requirements apply:
 - i. 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 advertised;
 - ii. 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;
 - iii. All bids will 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;
 - iv. 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 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; and
- (d) 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. If this method is used, the following requirements apply:
 - a. 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;
 - b. Proposals must be solicited from an adequate number of qualified sources;
 - c. The District must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - e. The District 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. 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 though A/E firms are a potential source to perform the proposed effort.

PROCUREMENT (continued)

- (e) Procurement by noncompetitive proposals: 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:
 - 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; or
 - d. After solicitation of a number of sources, competition is determined inadequate.

Procurement of Recovered Materials

The District must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource

recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Legal Reference:

CODE OF FEDERAL REGULATIONS
2 C.F.R. 200.317-326, Procurement Standards