

Operational Services

Administrative Procedure - Federal and State Award Procurement Procedures

In addition to the State legal requirements for purchases and contracts set forth in Board policy 4:60, *Purchases and Contracts*, and administrative procedure 4:60-AP1, *Purchases*, the following procedures apply to District procurement under federal awards and State awards governed by the Grant Accountability and Transparency Act (GATA).¹ The District maintains oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.²

Consult the Board Attorney regarding the legal requirements presented by this administrative procedure as well as before a contract is presented to the Board.³

Code of Conduct⁴

Board policies 2:100, *Board Member Conflict of Interest*, and 5:120, *Employee Ethics; Code of Professional Conduct; and Conflict of Interest*, contain standards of conduct covering conflicts of interest and governing the actions of Board members and employees engaged in the selection, award, and administration of contracts.

General Procurement Standards⁵

- A. The District shall avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economical approach. **Note:** A conflict between this regulation's requirements and the Ill. Criminal Code of 2012 may exist. See 720 ILCS 5/33E-2(i-5) and 5/33E-18 (defines and prohibits bid stringing, a Class 4 felony) and 720 ILCS 5/33E-3 (prohibits bid rigging, a Class 3 felony).
- B. To foster greater economy and efficiency, the District may enter into State and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the federal competition requirements.
- C. The District may use federal excess and surplus property instead of purchasing new equipment and property when it is feasible and reduces project costs.
- D. The District may use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost. **Note:** A conflict between this regulation's requirements and the Ill. Criminal Code of 2012 may exist. See 720 ILCS 5/33E-2(i-5) and 5/33E-18 (defines and prohibits bid stringing, a Class 4 felony).
- E. When conducting a procurement transaction, the District shall only award contracts to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. Consideration will be given to such matters as contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past

¹ 2 C.F.R. §§200.318-200.327; 30 ILCS 708/, Grant Accountability and Transparency Act (GATA). GATA adopts the federal uniform guidance for all grants, unless the Office of the Governor grants an exception. 30 ILCS 708/55; 44 Ill. Admin. Code §7000.60. For information about the scope of GATA as it pertains to grants administered by the Ill. State Board of Education (ISBE), see: www.isbe.net/gata.

² 2 C.F.R. §200.318(b).

³ Many legal issues will be solved by early and frequent consultation with the board attorney.

⁴ 2 C.F.R. §200.318(c).

⁵ 2 C.F.R. §200.318(b), (d)-(l).

performance record, and financial and technical resources. **Note:** State law generally requires award to the “lowest responsible bidder.” However, there are exceptions to this requirement listed at 105 ILCS 5/10-20.21, and other State laws may also govern standards for contract awards.

- F. The District shall maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.
- G. The District 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. **Note:** The Ill. Criminal Code of 2012 (720 ILCS 5/33E-9) requires approval of the Board or designee when a contract cost increases or decreases by \$25,000, a/k/a *change orders*. If a change order will exceed the original contract price by 10%, it must be rebid.
- H. The District shall 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.
- I. The District may use the following labor and employment practices if consistent with applicable federal and State laws:
 - 1. Using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements;
 - 2. Requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative, or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located. The hiring preferences or goals should be consistent with the policies and procedures of the District and must not prohibit interstate hiring;
 - 3. Requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. §3102(24))), including women and people from underserved communities;
 - 4. Using agreements intended to ensure uninterrupted delivery of services or community benefits; or
 - 5. Offering employees of a predecessor contractor rights of first refusal under a new contract.

Competition⁶

- A. All procurement transactions for the acquisition of property or services required under an award shall be conducted in a manner providing full and open competition consistent with the standards of State law (105 ILCS 5/10-20.21), Board policy 4:60, *Purchases and Contracts*, and this section. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements. Examples of situations that may restrict 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.
- B. State law may encourage or discourage Districts to conduct procurements in a manner that prohibits the use of local or tribal geographic preferences. Discuss these preferences with the Board Attorney. See also Doyle Plumbing & Heating Co. v. Bd. of Educ., Quincy Pub. Sch. Dist. No. 172, 291 Ill.App.3d 221 (4th Dist. 1997); Cardinal Glass Co. v. Bd. of Educ. of Mendota Comm. Consol. Sch. Dist. 289, 113 Ill.App.3d 442 (3rd Dist. 1983). Nothing in this section preempts State licensing laws.

⁶ 2 C.F.R. §200.319.

Note: The Board must also follow the Local Government Professional Services Selection Act. 50 ILCS 510/.

- C. Procurement Transactions. All solicitations will:
1. Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured.
 - a. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform.
 - b. Detailed product specifications should be avoided if at all possible.
 - c. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a “brand name or equivalent” description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated.
 2. Identify any additional requirements which offerors must fulfill and all other factors that will be used in evaluating bids and proposals.
- D. The District shall ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. **Note:** State laws may conflict with this provision. See 105 ILCS 5/10-20.21 and 50 ILCS 510/.
- E. The District shall not preclude potential bidders from qualifying during the solicitation period.
- F. The District may develop written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders who commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections, but only to the extent consistent with the law and the District's established policies. The District may make inquiries of bidders about these subjects and assess their responses.
- G. Noncompetitive procurements can only be awarded in accordance with the requirements detailed in paragraph E of the **Methods of Procurement** subhead below.

Methods of Procurement ⁷

The District shall use one of the following methods of procurement and must maintain and use documented procurement procedures:

- A. 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 of \$10,000, as may be amended from time to time.⁸ To the extent practicable, the District shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Board considers the price reasonable based on research, experience, purchase history, or other information and maintains documents to support its conclusion. **Note:** See 105 ILCS 5/10-20.21 and Board policy 4:60, *Purchases and Contracts*.

⁷ 2 C.F.R. §200.320.

⁸ The *micro-purchase threshold* is set by the Federal Acquisition Regulation (FAR) at 48 C.F.R. Subpart 2.1 (Definitions), but is periodically adjusted for inflation. 2 C.F.R. §200.1.

2 C.F.R. §200.320(a)(1) authorizes a district to increase its own micro-purchase threshold up to \$50,000, if it has determined and documented that a higher threshold is appropriate based on its internal controls, an evaluation of risk, and documented procurement procedures. If a district increases its threshold, it must annually self-certify and make supporting documentation available to the awarding agency or pass-through entity and auditors during the retention period specified in 2 C.F.R. §200.334. The self-certification must include a justification, clear identification of the threshold, and documentation that the higher threshold is consistent with the bidding statute, 105 ILCS 5/10-20.21. See sample policy 4:60, *Purchases and Contracts*. A board that wants to increase its threshold should consult the board attorney for guidance on the content and method of self-certification, such as an annual resolution to be adopted by the board. If the district has established a micro-purchase threshold greater than \$10,000, substitute that amount in Item A above. Micro-purchase thresholds higher than \$50,000 must be approved by the *cognizant agency for indirect costs*, which means the federal agency assigned responsibility for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals. 2 C.F.R. §200.1.

- B. Simplified acquisition procedures. The District may use simplified acquisition procedures when the aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold⁹ of \$250,000, as may be amended from time to time. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources, as determined appropriate by the District.
- C. Sealed bids. Formal procurement methods are required when the value of the procurement transaction under a federal award exceeds the simplified acquisition threshold of the District. Formal procurement methods are competitive and require public notice. Bids are publicly solicited through an invitation and a firm fixed price contract¹⁰ (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. **Note:** 105 ILCS 5/10-20.21 requires all contracts for purchase of supplies and materials or work involving an expenditure in excess of \$35,000 or a lower amount as required by Board policy to be awarded to the “lowest responsible bidder.” The sealed bid method is the preferred method for procuring construction services if the conditions in 2 C.F.R. §200.320(b)(1)(i) apply. If sealed bids are used, the requirements in 2 C.F.R. §200.320(b)(1)(ii) apply. **Note:** 105 ILCS 5/10-20.21 requires sealed bids.
- D. Proposals. Formal procurement methods are required when the value of the procurement transaction under a federal award exceeds the simplified acquisition threshold of the District. Formal procurement methods are competitive and require public notice. The use of proposals is a procurement method in which either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for using sealed bids. Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered. If this method is used, the requirements in 2 C.F.R. §200.320(b)(2) apply. **Note:** 105 ILCS 5/10-20.21 requires sealed bids.
- E. Noncompetitive procurement. Noncompetitive procurement may be used only when one or more of the circumstances in §200.320(c) apply: (1) the cost of the procurement transaction does not exceed the micro-purchase threshold; (2) the procurement transaction can only be fulfilled from a single source; (3) public exigency or emergency will not permit a delay resulting from providing public notice of a competitive solicitation; (4) the awarding agency or pass-through entity expressly provides written approval of a noncompetitive procurement in response to a written request from the District to use a noncompetitive procurement method; or (5) after solicitation of several sources, the District determines competition is inadequate. **Note:** 50 ILCS 510/ may conflict with this regulation.

Procurement of Recovered Materials ¹¹

When the District procures items designated by the Environmental Protection Agency (EPA) as capable of being produced with recovered materials¹², and the purchase of the items exceeds \$10,000 or the quantity

⁹ *Simplified acquisition threshold* (SAT) means the dollar amount below which a district may purchase property or services using small purchase methods. Districts may adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation (FAR) at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. §1908 and is periodically adjusted for inflation. See also definition of §200.1 Micro-purchase, 2 C.F.R. §200.1.

2 C.F.R. §300.320(a)(2) authorizes a district to use a lower SAT than the one established by the FAR. The district is responsible for determining an appropriate SAT based on its internal controls, an evaluation of risk, and its documented procurement procedures. *Id.* If the district has established a SAT lower than \$250,000, substitute that amount in Item B above.

¹⁰ *Contract* means a legal instrument by which a district conducts procurement transactions under a federal award. See also the definition of *subaward*, 2 C.F.R. §200.1.

¹¹ 42 U.S.C. §6962; 2 C.F.R. §200.323.

¹² 40 C.F.R. Part 247. For recommendations that the EPA has developed for recovered (recycled) content and for its list of designated products, see: www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program, which was developed as part of the EPA’s Comprehensive Procurement Guideline (CPG) Program.

of the items (or functionally equivalent items) purchased in the preceding fiscal year exceeded \$10,000, the District shall:

- A. Ensure the items contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The decision not to procure such items must be based on a determination that the items: (1) are not reasonably available within a reasonable period of time, (2) fail to meet the performance standards in the applicable specifications, or (3) are only available at an unreasonable price. ¹³
- B. Procure solid waste management services in a manner that maximizes energy and resource recovery.
- C. Establish an affirmative procurement program for procurement of recovered materials identified in EPA guidelines. The program must contain the following elements: ¹⁴
 - 1. Preference program for purchasing the designated items;
 - 2. Promotion program;
 - 3. Procedures for obtaining estimates and certifications of recovered materials content and for verifying the estimates and certifications; and
 - 4. Annual review and monitoring of the effectiveness of the program.
- D. Endeavor to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.

Contracting with Small Businesses, Minority Businesses, Women's Business Enterprises, Veteran-Owned Businesses, and Labor Surplus Area Firms ¹⁵

The District shall take all necessary affirmative steps to assure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered. Such consideration means:

- A. These business types are included on solicitation lists;
- B. These business types are solicited whenever they are deemed eligible as potential sources;
- C. Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- D. Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
- E. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Dept. of Commerce; and
- F. Requiring a contractor to apply paragraphs (A) through (E) to subcontracts.

Contract Cost and Price ¹⁶

- A. The District shall perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold. The method and degree of analysis conducted depends on the facts surrounding the particular procurement transaction. For example, the District should consider potential workforce impacts in the analysis if the procurement transaction will displace public sector employees. However, as a starting point, the District must make independent estimates before receiving bids or proposals.

¹³ 42 U.S.C. §6962(c)(1).

¹⁴ 40 C.F.R. §247.6. For a summary of the requirements of an Affirmative Procurement Program, see: www.epa.gov/smm/summary-affirmative-procurement-program.

¹⁵ 2 C.F.R. §200.321. See also the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, 30 ILCS 575/.

¹⁶ 2 C.F.R. §200.324.

- B. Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that the costs incurred, or cost estimates included in negotiated prices would be allowable for the District under Subpart E, Cost Principles, of 2 C.F.R. Part 200.
- C. The District must not use the "cost plus a percentage of cost" and "percentage of construction costs" methods of contracting.

Federal Agency or Pass-Through Entity Review ¹⁷

The District shall submit, upon request of the federal agency¹⁸ or pass-through entity¹⁹ (Ill. State Board of Education):

- A. Technical specifications of proposed procurements under the federal award if the federal agency or pass-through entity believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition; and
- B. Procurement documents (such as requests for proposals or invitations for bids, or independent cost estimates) for pre-procurement review when one or more of the circumstances in §200.325(b) apply.

Bonding Requirements ²⁰

- A. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold²¹, the federal agency or pass-through entity may accept the bonding policy and requirements of the District provided that the federal agency or pass-through entity has made a determination that the federal interest is adequately protected.
- B. If such a determination has not been made, the minimum requirements shall be as follows:
 1. A bid guarantee from each bidder equivalent to five percent of the bid price. The *bid guarantee* must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the timeframe specified.
 2. A performance bond on the part of the contractor²² for 100 percent of the contract²³ price. A *performance bond* is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.
 3. A payment bond on the part of the contractor for 100 percent of the contract price. A *payment bond* is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

Contract Provisions ²⁴

The District's contracts shall contain the applicable provisions described in Appendix II to 2 C.F.R. Part 200, *Contract Provisions for non-Federal Entity Contracts Under Federal Awards*.

¹⁷ 2 C.F.R. §200.325.

¹⁸ *Federal agency* means the federal agency that provides a federal award directly to a recipient unless the context indicates otherwise. See also definitions of federal award and recipient. 2 C.F.R. §200.1.

¹⁹ Pass-through entity means a recipient or subrecipient that provides a subaward to a subrecipient (including lower tier subrecipients) to carry out part of a federal program. The authority of the pass-through entity under this part flows through the subaward agreement between the pass-through entity and subrecipient. 2 C.F.R. §200.1.

²⁰ 2 C.F.R. §200.326.

²¹ See f/n 8, above.

²² *Contractor* means an entity that receives a contract. 2 C.F.R. §200.1.

²³ *Contract* means a legal instrument by which a recipient or subrecipient conducts procurement transactions under a federal award. See also definition of *subaward*, 2 C.F.R. §200.1.

²⁴ 2 C.F.R. §200.327.

Approved: