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REVISED POLICY - VOL. 19, NO. 1

6320 - PURCHASING AND CONTRACTING FOR COMMODITIES AND CONTRACTUAL SERVICES

Any School Board employee who has purchasing authority shall consider first the interests of the Board in all purchases and seek to obtain the maximum value for each dollar expended; not solicit or accept any gifts or gratuities from present or potential suppliers which might influence or appear to influence purchasing decisions; and refrain from any private business or professional activity that might present a conflict of interest in making purchasing decisions on behalf of the Board.

No person, unless authorized to do so under this policy, may make any purchase or enter into any contract involving the use of school funds. The Board will not approve any expenditure for an unauthorized purchase or contract.

Purchases may be made through an online procurement system, an electronic auction service, or other efficient procurement tool.

Scope

This policy shall generally apply to the District's purchase of commodities and contractual services, except it shall not apply to:

- A. employment contracts;
- B. acquisition of architectural, engineering, landscape architectural, construction management at risk, registered surveying and mapping, or other services pursuant to Policy 6330 - Acquisition of Professional Architectural, Engineering, Landscape Architectural, or Land Surveying Services;
- C. acquisition of auditing services pursuant to F.S. 218.391;
- D. acquisition of professional consultant services, including but not limited to services of lawyers, accountants, financial consultants and other business or operational consultants, which shall be governed by Policy 6540 - Consultant Agreements;
- E. contracts which are exempted, in whole or in part, from this policy's requirements, as set forth below;
- F. proposals and agreements for public-private partnerships with private entities for qualifying projects pursuant to F.S. 287.057(12).

Definitions

- A. "Competitive solicitation" means purchasing made through the issuance of an invitation to bid, request for proposals and invitation to negotiate. Competitive solicitations are not required for purchases made through the pool purchase provisions of F.S. 1006.27.
- B. "Invitation to bid" means a written or electronic solicitation for competitive sealed bids. The invitation to bid is used when the Board is capable of specifically defining the scope of work for which a contractual service is required or when the Board is capable of establishing precise specifications defining the actual commodity or group of commodities required. A written solicitation includes a solicitation that is publicly posted.

- C. "Invitation to negotiate" means a written or electronically posted solicitation for competitive sealed replies to select one (1) or more vendors with which to commence negotiations for the procurement of commodities or contractual services. The invitation to negotiate is used when the Board determines that negotiations may be necessary for it to receive the best value. A written solicitation includes a solicitation that is publicly posted.
- D. "Proposer" means those vendors submitting bids or responses to a competitive solicitation.
- E. "Request for proposals" means a written or electronically posted solicitation for competitive sealed proposals. The request for proposals is used when it is not practicable for the Board to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the Board is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. A written solicitation includes a solicitation that is publicly posted.
- F. "Superintendent" means the "Superintendent or designee".
- G. "Request for Quotations" means an informal process to solicit three (3) or more price quotes on commodities or contractual services with standard specifications and valued under the threshold requiring formal competitive solicitations. Quotations may be obtained verbally or via facsimile or e- mail.

Standards and Specifications

Before making any purchase of commodities or contractual services which the Superintendent is authorized by the Board to make or before recommending any purchase to the Board, the Superintendent shall, insofar as possible, propose standards and specifications. S/He shall see that the commodities or contractual services conform to those standards and specifications, and shall take such other steps as are necessary to see that the maximum value is being received for any money expended.

Pre-Purchasing Review of Available Purchasing Agreements and State Term Contracts for Nonacademic Commodities and Contractual Services

Before purchasing nonacademic commodities and contractual services, the Board authorizes the Superintendent to review the purchasing agreements and State term contracts available under F.S. 287.056 to determine whether it is in the Board's economic advantage to use the agreements and contracts.

Each bid specification for nonacademic commodities and contractual services must include a statement indicating that the purchasing agreements and State term contracts available under F.S. 287.056 have been reviewed. The Board may use the cooperative State purchasing programs managed through the regional consortium service organizations pursuant to F.S. 1001.451. This policy does not apply to services that are eligible for reimbursement under the Federal E-rate program administered by the Universal Service Administrative Company.

Competitive Solicitation Requirements for Commodities and Contractual Services Other Than Construction Contracting

Except as authorized by law or policy, competitive solicitations shall be requested from three (3) or more sources for the purchase of any authorized commodities or contractual services in an amount greater than

[] \$50,000.00.

[] \$ _____.

[NOTE: The Board may set a threshold less than the \$50,000.00 established in State Board rule.]

The procurement of commodities or contractual services may not be divided so as to avoid this monetary threshold requirement.

A. Bid Solicitation

The Superintendent is authorized to issue invitations for bids.

B. Bid Publication

Notice of the invitation for bids or requests for proposals shall be published at least once in a newspaper of general circulation within the District, and may be otherwise issued electronically, direct delivery, or other means which are appropriate under the circumstances. The required bid return date is to be announced at the time of the bid offering and shall not be less than five (5) working days from the bid offering date.

C. Bid Responses

The invitations to bid must be responded to by three (3) or more qualified vendors/bidders. Exceptions must be approved by the Board.

D. Bid Opening

Bids will be opened in the office designated in the bid advertisement with the Superintendent's designee and at least one (1) other District employee present.

E. Bid Rejection

The Board may reject any or all bids and request new bids.

F. Bid Award

In acceptance of responses to invitations to bid, the Board may accept the proposal of the lowest responsive, responsible proposer. The Board may also choose to award contracts to the lowest responsive, responsible bidder as the primary awardee of a contract and to the next lowest responsive, responsible bidder(s) as alternate awardees, from whom commodities or contractual services would be purchased, should the primary awardee become unable to provide all of the commodities or contractual services required by the Board during the term of the contract. Nothing herein is meant to prevent multiple awards to the lowest responsive and responsible bidders, when such multiple awards are clearly stated in the bid solicitation documents.

For a bidder to be considered responsive, the proposal must respond to all bid specifications in all material respects and contain no irregularities or deviations from the bid specifications which would affect the amount of the bid or otherwise provide a competitive advantage.

For a bidder to be deemed responsible, the Board may request evidence from the bidder concerning:

1. () the experience (type of product or service being purchased, etc.) of the bidder;
2. () the financial condition;
3. () the conduct and performance on previous contracts (with the District or other agencies);
4. () the bidder's facilities;
5. () management skills;
6. () the ability to execute the contract properly;
7. () a signed affidavit ensuring that neither the bidder nor any subcontractor has entered into an agreement with any labor organization regarding the public improvement project.

Award of a bid by the Board shall only represent an indication by the Board that a bid represents the lowest responsive bid from a responsible and responsive bidder meeting the requirements and criteria set forth in the invitation to bid. Award of a bid shall not create a binding obligation on the Board, and no obligation shall be created or imposed on the District until such time as the Board Chair/designee executes a contract.

() [OPTIONAL]

Identical/Tie Low Bids

When identical low bids are received from an out-of-District vendor and a local vendor, the local vendor shall be recommended for award. The term "local vendor" means a vendor who has an established business presence in the District indicated by the following:

- A. Has a physical business location within the District for at least six (6) months immediately prior to issuance of the competitive solicitation.
- B. Provides customer access at the business location.
- C. Holds any required business license through a jurisdiction in the District.

- D. Employs one (1) full-time or two (2) part-time employees in the District, or if the business has no employees, is at least fifty percent (50%) owned by one (1) or more persons whose primary residence(s) is located within the District.

When two (2) or more local vendors present tie low bids on the same items, the company receiving the larger dollar award of the total bid shall be recommended for tie items.

In the event two (2) or more local vendors present exact tie low bids and the dollar award is not a criterion, the successful bidder shall be selected by applying the following criteria in order:

- A. drug-free workplace program in accordance with Florida law
- B. minority business enterprise (MBE) certified by the State of Florida Office of Supplier Diversity
- C. veteran business enterprise, certified by the State of Florida Department of Management Services
- D. by lot or other method the Board may select

When two (2) out-of-District vendors submit identical low bids, the criteria noted above shall be used to determine the successful bidder.

[END OF OPTION]

() [OPTIONAL]

Vendor Preference For Certified Veteran Business Enterprises

As authorized by F.S. 295.187, "The Florida Veteran Business Enterprise Act", the Board shall provide a vendor preference in favor of certified veteran business enterprises.

The certification of a veteran business enterprise shall be granted by the Department of Management Services, with the assistance of the Department of Veterans' Affairs, as required by State law.

When two (2) or more bids, proposals or replies for procurement of commodities or contractual services, which are equal with respect to all relevant considerations, including price, quality, and service, are submitted and at least one (1) is from a certified veteran business enterprise, priority for award shall be given to the certified veteran business enterprise as defined by F.S. 295.187. In the event two (2) or more certified veteran business enterprises are entitled to the preference, then the award shall be given to the business having the smallest net worth.

To the extent that this provision is inconsistent with the provisions of this or any other Board policy, this provision shall prevail.

[END OF OPTION]

Exception to Competitive Bidding Requirements

Notwithstanding anything in this policy to the contrary, the Board may make certain purchases without the requirement for competitive solicitations, under the following conditions:

- A. In lieu of requesting competitive solicitations from three (3) or more sources, the Board may make purchases at or below the unit prices in contracts awarded by other Federal, State, city or county governmental agencies, other school boards, community colleges, or State university system cooperative bid agreements when the proposer awarded a contract by another entity will permit purchases by the Board at the same terms, conditions, and unit prices (or below such prices) awarded in such contract, and such purchases are to the economic advantage of the Board.

B. [Note: The following are optional under F.A.C. 6A-1.012(2)]

() The Superintendent is authorized to purchase commodities and contractual services where the total amount does not exceed \$_____ and does not exceed the applicable appropriation in the budget.

() The Superintendent is authorized to purchase commodities and contractual services under the Department of Management Services State term contracts.

[END OF OPTION]

- C. Competitive solicitations are not required for pool purchases made as provided in F.S. 1006.27.

D. The State Board has waived the requirement for requesting competitive solicitations from three (3) or more sources for purchases by the Board of:

1. Professional services which shall include, without limitation, artistic services; academic program reviews; lectures by individuals; auditing services not subject to F.S. 218.391; legal services, including attorney, paralegal, expert witness, court reporting, appraisal or mediator services; and health services involving examination, diagnosis, treatment, prevention, medical consultation or administration; provided nothing herein shall be deemed to authorize the superintendent to acquire professional consultant services without Board approval as required by Board Policy 6540;
2. Educational services and any type of copyrighted materials including, without limitation, educational tests, textbooks, printed instructional materials, computer software, films, filmstrips, videotapes, DVDs, disc or tape recordings, digital recordings, or similar audio-visual materials, and for library and reference books, and printed library cards where such materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent within the state, a governmental agency or a recognized educational institution;

3. Commodities and contractual services when:

- a. competitive solicitations have been requested in the manner prescribed by this policy; and
- b. the Board has made a finding that no valid or acceptable firm proposal has been received within the prescribed time.

When such a finding has been officially made, the Board may enter into negotiations with suppliers of such commodities and contractual services and may execute contracts with such vendors under whatever terms and conditions as the Board determines to be in its best interests.

4. Commodities and contractual services when fewer than two (2) responsive proposals are received. The Board may then negotiate on the best terms and conditions or decide to reject all proposals. The Board will document the reasons that negotiating terms and conditions with the sole proposer is in the best interest of the District in lieu of re-soliciting proposals.

E. Information technology resources, whether by purchase, lease, lease with option to purchase, rental, or otherwise as defined in F.S. 282.0041(15), may be acquired by competitive solicitation or by direct negotiation and contract with a vendor or supplier, as best fits the needs of the District as determined by the Board.

F. Purchases of insurance, risk management programs, or contracting with third party administrators for insurance-related services may be through competitive solicitation or by direct negotiation and contract with a vendor or supplier.

G. ~~(-) Purchases of food products, required by the Board's food service program and other ancillary food operations, except milk from competitive bid requirements.~~

H. ~~Purchase of milk is exempt from competitive bid requirements if:~~

1. ~~the Board has made a finding that no valid or acceptable firm bid has been received within the prescribed time;~~
2. ~~The Board has made a finding that an emergency situation exists.~~

~~The Board may then enter into negotiations with suppliers of milk and has the authority to execute contracts under whatever terms and conditions the Board determines to be in the best interest of the District.~~

I. The Board may dispense with requirements for competitive solicitation for the emergency purchase of commodities or contractual services when the Superintendent determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the District requires emergency action. After the Superintendent makes such a written determination, the Board may proceed with the procurement of commodities or contractual services necessitated by the immediate danger, without requesting competitive solicitations. However, such an emergency purchase shall be made by obtaining pricing information from at least two (2) prospective vendors, which must be retained in the contract file, unless the Superintendent determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the District.

J. Commodities or contractual services available only from a single source may be exempted from the competitive solicitation requirements. When the Board believes that commodities or contractual services are available only from a single source, the Board will electronically post a description of the commodities or contractual services sought for a

period of at least seven (7) business days. The description will include a request that prospective vendors provide information about their ability to supply the commodities or contractual services described. If it is determined in writing by the Board, after reviewing any information received from prospective vendors, that the commodities or contractual services are available only from a single source, the Board shall provide notice of its intended decision to enter a single source contract in the manner specified in Policy 6326 - Bid Protests, and may negotiate on the best terms and conditions with the single source vendor.

- K. The Board may make purchases of construction project materials directly from vendors, on behalf of the awarded construction contractor/manager, to take advantage of the District's "sales tax" exempt status.
- L. A contract for commodities or contractual services may be awarded without competitive solicitations if State or Federal law, a grant or a State or Federal agency contract prescribes with whom the Board must contract or if the rate of payment is established during the appropriations process.
- M. A contract for regulated utilities or government franchised services may be awarded without competitive solicitations.

Contract

Each Board contract for services must include a provision that requires the contractor to comply with public records laws, specifically to:

- A. keep and maintain public records that ordinarily and necessarily would be required by the Board in order to perform the service under the contract;
- B. provide the public with access to its public records on the same terms and conditions as the Board would provide the records, and at a cost that does not exceed the cost provided in Policy 8310 - Public Records;
- C. ensure that any of its public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law;
- D. meet all requirements for retaining public record and, upon termination of the contract, transfer to the Board, at no cost, all public records in its possession and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Board in a format that is compatible with the Board's information technology systems;
- E. the contractor shall furnish a copy of any public records request or request for records in any way relating to the District, immediately upon receipt to the District's Director of Purchasing.

Each contract must also include the following statement, in substantially the following form, identifying the contact information of the District's custodian of public records in at least fourteen (14) point boldface type: "IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF F.S. CHAPTER 119 TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT _____. (Insert District's custodian of public records telephone number, e-mail address, and mailing address)".

[NOTE: The Board may set a threshold between zero and the \$50,000.00 established in State Board rule.]

Contracts shall be approved and executed as follows:

A. Superintendent/Designee Authority

The Superintendent is authorized to approve and execute contracts on behalf of the District involving expenditure of public funds in an amount no greater than \$_____, so long as the obligation created does not exceed the applicable appropriation within the District budget and the contract is otherwise in compliance with applicable District procedures, policies, and law. For purposes of this policy, any group of contracts purchase orders to the same provider which are connected in terms of time, location and services such that a reasonable person would view them as a single contract shall be deemed to be a single contract. The Superintendent shall not divide the procurement of commodities or contractual services so as to avoid the monetary cap imposed by this policy. Designations of contracting authority by the Superintendent shall be in writing and shall specify the maximum obligation permitted up to \$_____.

B. Emergency Purchases

Notwithstanding the general limit on the Superintendent's authority to enter into contracts involving expenditure of public funds in an amount no greater than \$_____, the Superintendent is authorized to approve and execute contracts on behalf of the District involving expenditure of public funds in an amount greater than \$_____ when the Superintendent determines in writing that an immediate danger to the public health, safety, or welfare or other substantial loss to the

School District requires emergency action.

C. Board Approval

Except as expressly provided herein, the Board shall approve and execute all contracts on behalf of the District involving expenditure of public funds in an amount greater than \$_____.

Purchase Order Approval

A. Bids/Exceptions

The Superintendent is authorized to issue purchase orders in accordance with bids awarded pursuant to below without further action of the Board so long as the obligation created does not exceed the applicable appropriation within the District budget. The Superintendent shall inform the Board of the approval of all purchase orders greater than \$10,000, as soon as reasonably possible by a written report issued to the Board at a public meeting. This paragraph shall not be construed to require Board approval of purchase orders.

B. Contracts

The approval of a contract in accordance with this policy authorizes the Superintendent to approve and issue any purchase order required to fulfill the District's obligation under the approved contract without further action of the Board. The Superintendent shall inform the Board of the approval of all purchase orders greater than \$_____, as soon as reasonably possible by a written report issued to the Board at a public meeting. This section shall not be construed to require Board approval of purchase orders.

Debarment

The Director of Purchasing shall have the authority to debar a person/corporation, for cause, from consideration or award of further contracts. The debarment shall be for a period commensurate with the seriousness of the cause, generally not to exceed three (3) years. If suspension precedes a debarment, the suspension period shall not be considered in determining the debarment period. When the offense is willful or blatant, a longer term of debarment may be imposed, up to an indefinite period.

A. Cause of Debarment

The term "debar" or "debarment" means to remove a vendor from bidding on District work. Causes for debarment include, but are not limited to the following:

1. conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or sub-contract, or in performance of such contract
2. conviction under State or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property, or any other offense indicating lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a vendor
3. conviction under State or Federal anti-trust statutes arising out of submission of bids or proposals
4. violation of contract provisions, including:
 - a. deliberate failure, without good cause, to perform in accordance with specifications or within the time limits provided in the contract(s); and
 - b. a recent record of failure to perform, or of unsatisfactory performance, in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment
5. refutation of an offer by failure to provide bonds, insurance or other required certificates within the time period as specified in bid/RFP response
6. refusal to accept a purchase order, agreement, or contract, or to perform thereon, provided such order was issued timely and in conformance with the offer received
7. presence of principals or corporate officers in the business of concern who were principals within another business at the time when the other business was suspended within the last three (3) years under the provisions of this

section

8. violation of the ethical standards set forth in State law
9. providing or offering to provide anything of value, including, but not limited to, a gift, loan, reward, promise of future employment, favor or service to any employee to influence the award of contract or purchase items from a contractor
10. existence of unresolved disputes between the contractor and the District arising out of or relating to prior contracts between the District and the contractor, work performed by the contractor, or services or products delivered
11. any other cause the Director of Purchasing determines to be so serious and compelling as to affect credibility as a District vendor, including debarment by another governmental entity for any cause listed in this policy

B. Notice of Recommended Decision

The Director of Purchasing or designee shall issue a notice letter that advises the party that it is debarred or suspended. The letter shall:

1. state the reason(s) for the action taken; and
2. inform the vendor of its right to petition the Board for reconsideration.

C. Right to Request a Hearing

Any person who is dissatisfied or aggrieved with the notification of the determination to debar or suspend must, within ten (10) calendar days of such notification, appeal such determination to the Board.

D. Hearing Date

The Board shall schedule a hearing at which time the person shall be given the opportunity to demonstrate why the debarment/suspension by the Director of Purchasing should be overturned. All parties shall be given notice of the hearing date.

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Legal

F.S. 119.0701
F.S. 255.05
F.S. 255.0516
F.S. 255.0518
F.S. 287.056
F.S. 287.084
F.S. 287.087
F.S. 287.132
F.S. 287.133
F.S. 295.187
F.S. 1001.43
F.S. 1001.451
F.S. 1010.04
F.S. 1010.07(2)
F.S. 1010.48
F.A.C. 6A-1.012, Purchasing Policies
F.A.C. 5P-1.003, Responsibilities for the School Food Service Program

Cross References

po6326 - BID PROTESTS
po6330 - ACQUISITION OF PROFESSIONAL ARCHITECTURAL, ENGINEERING, LANDSCAPE ARCHITECTURAL, OR LAND SURVEYING SERVICES
po6540V1 - CONSULTANT AGREEMENTS
po6540V2 - EMPLOYMENT OF CONSULTANTS
po8310 - PUBLIC RECORDS
ap6320a - PURCHASING
ap6320B1 - PREPARING PURCHASE ORDERS
ap6320C1 - BIDDING
ap6320C2 - INSTRUCTIONS TO BIDDERS
ap6320D - STOCKROOM REQUISITIONS
ap6320E - RETURNS AND EXCHANGES
ap6320H - MILEAGE REIMBURSEMENT