

## **7.5 - PURCHASES AND PROCUREMENT**

Purchases shall be made in accordance with State laws and procurement procedures governing school purchases that are deemed to be in the best interest of the District and are the result of fair and open competition between qualified bidders and suppliers. No bids shall be taken for professional services.

### **DEFINITIONS**

"Commodities" are all supplies, goods, material, equipment, computers, software, machinery, facilities, personal property, and services, other than personal and professional services, purchased on behalf of the District.

"micro-purchases" are purchases with a value of less than ten thousand dollars (\$10,000) when purchased with Federal funds.

"Professional services" are legal, financial advisory, architectural, engineering, construction management, and land surveying professional consultant services.<sup>1</sup>

"Specifications" means a technical description or other description of the physical and/or functional characteristics of a commodity.

### **Commodities**

The superintendent shall develop procedures for the procurement of micro-purchases that provide for the distribution of purchases between eligible vendors to the extent possible.

Purchases of commodities with a purchase price of more than \$10,000 require prior Board approval, however, if an emergency exists, the Superintendent may waive this requirement.

The District shall notify in writing all actual or prospective bidders, offers, or contractors who make a written request to the District for notification of opportunities to bid. The notification shall be made in sufficient time to allow actual or prospective bidders, offers, or contractors to submit a bid or other appropriate response. The Board shall accept bids submitted electronically by email or fax for any and all District purchases, unless specified to be submitted by other means or methods, and except those bids which have been specified to have a designated date upon which the bids shall be opened. The superintendent shall be responsible for ensuring submitted bids, whether written, faxed, or emailed, are retained in accordance with policy 7.15 – RECORD RETENTION AND DESTRUCTION.

The district will not solicit bids or otherwise contract for a sum greater than twenty-five thousand dollars (\$25,000) with vendors that are on the "excluded parties list" if the contract is to be paid from federal grant funds.<sup>5</sup>

All purchases for a Federal program with an estimated purchase price between ten thousand (\$10,000) and twenty one thousand nine hundred eighty four dollars (\$21, 284) and all purchases of commodities with an estimated purchase price that equals or exceeds twenty one thousand nine hundred eighty four dollars (\$21,284) shall be procured by soliciting bids. Specifications shall be devised for all commodities to be bid that are specific enough to ensure uniformity of the bid and yet not so restrictive that it would prevent competitive bidding. The bid specifications shall not include the name or identity of any specific vendor. The Board reserves the right to reject all bids and to purchase the commodity by negotiating a contract. In such an instance, each responsible bidder who submitted a bid shall be notified and given a reasonable opportunity to negotiate.<sup>6</sup>

Bids shall be awarded after careful examination of the details of the bid to determine the best overall value to the District. In instances where the low bid was not accepted a statement of the reasons the low bid was not accepted shall be attached to the bid. Bidders submitting written bids shall be notified in writing of the bid award.

Whenever possible, a preference will be given to small and minority businesses; women's business enterprises; and labor surplus area firms.<sup>8</sup>

The District shall provide a preference to Arkansas residents whenever the District is accepting bids to purchase materials and equipment as part of a construction project if:

- a. One (1) or more Arkansas residents who submitted bids made written claim for a preference at the time they submitted a bid; and
- b. An Arkansas resident's bid does not exceed the lowest qualified bid from a nonresident by more than five percent (5%).

If the qualifications for the Arkansas resident preference are met, then the District shall take the lowest bid from an Arkansas resident regardless of whether the Arkansas resident was one of the individuals who requested the preference.

The following commodities may be purchased with State funds without soliciting bids provided that the purchasing official determines in writing that it is not practicable to use other than the required or designated commodity or service, and a copy of the written determination is attached to the purchase order:

- Commodities in instances of an unforeseen and unavoidable emergency;
- Commodities available only from the federal government;
- Utility services;
- Used equipment and machinery, <sup>10</sup>except used buses; and
- Commodities available only from a single source<sup>11</sup>

Commodity purchases with Federal funds may be purchased without soliciting bids only when one or more of the following circumstances apply:

1. The item 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 appropriate unit of the Division of Elementary and Secondary Education expressly authorizes the noncompetitive purchase in response to a written request from the District; or
4. After solicitation of a number of sources, competition is determined inadequate.

The District may purchase a new motor vehicle, other than a school bus, without soliciting bids if, at the time of the purchase, the:

- a. Purchase is from a motor vehicle dealer licensed in Arkansas;
- b. Purchase price of the motor vehicle does not exceed the fleet price awarded by the Office of State Procurement; and
- c. Motor vehicle to be purchased is the same make and model motor vehicle as the make and model the fleet price was awarded for by the Office of State Procurement.

Prospective bidders, offers, or contractors may appeal to the district's Superintendent if they believe the District failed to follow District bidding and purchasing policy or state law.

Any award of a contract shall be subject to revocation for ten (10) working days from:

- The initial awarding of the contract; or

## If an appeal is received, resolution of the appeal

The intent to provide prospective bidders, offers, or contractors the opportunity to appeal the bid award if they believe the facts warrant an appeal. Any appeal shall be **in writing by certified mail** and received by the District office, "attention to the Superintendent" within seven calendar days following the initial and revocable award of the contract.

If the District receives an appeal of a bid award, they shall notify, in writing, those prospective bidders, offers, or contractors who have made a written request to the District for notification of opportunities to bid that an appeal has been submitted. The notification shall state:

- that the contract award has been halted pending resolution of the appeal and could be revoked;
- the reasons for the appeal;
- that the recipient of the letter may respond to the protested issues identified in the appeal;
- the date the decision on the appeal will be made and notification sent;
- that, if the appeal is upheld, the bidding process will be re-opened;
- that if the bidding is re-opened, changes will be made to the request for bids as necessary to satisfy the reasons for upholding the appeal.

The sole authority to resolve any appeal made relating to this policy shall rest with the Superintendent. The Superintendent's decision shall be final and conclusive. In the event the District upholds an appeal, the sole responsibility of the District to the aggrieved bidder(s) shall be the re-opening of the bidding process.

Except when prohibited by law<sup>13</sup>, the District reserves the right to extend or renew a contract that was previously awarded under the process governed by this policy and law, provided the extension or renewal meet the following criteria.

1. The equipment and services provided under the extended or renewed contract meets or exceeds the specifications of the original bid.
2. The extended or renewed contract agreement complies with the state of Arkansas's documentation requirements.
3. The cost of the extended or renewed contract is the same or less than the original contract.
4. The extension or renewal is approved by the local school board.

### **Professional Services**

The District does not use a bidding process when procuring professional services. Instead, when the District needs to procure professional services, the District shall:

1. Select three (3) qualified firms;
2. Determine the most qualified firm by considering, at a minimum, the:
  - Specialized experience and technical competence of the firm with respect to the type of professional services required;
  - Capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;
  - Past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules and deadlines; and
  - Firm's proximity to and familiarity with the area in which the project is located;
3. Negotiate a contract for the project with the most qualified firm.

When negotiating a contract, the District and the selected firm shall jointly prepare a detailed, written description of the scope of the proposed services. If the District is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated and the District shall negotiate a contract with the next most qualified firm. In the event the District is unable to negotiate a contract with any of the original selected firms, the District shall reevaluate the necessary professional services, including the scope and reasonable fee requirements, and return to step one.

The District encourages firms who provide professional services to submit annual statements of qualifications and performance data to the District. The District shall request any additional information as needed for a particular public project.

Notes: <sup>1</sup> The definition of "professional service" contains the entire list of professional services in A.C.A. § 19-11-801 that are automatically removed from the bidding process. The board has the option to add additional professional services to this list with a two-thirds (2/3) vote for each service type to be added. Services that can be added to the list are services that require a firm or individual to hold a valid license specific to perform the type of service in question.

<sup>2</sup> Insert an amount less than ten thousand dollars(10,000) for Federal purchases and twenty one thousand nine hundred eighty four dollars (\$21,284)for purchases without Federal funds if your board determines a lesser amount is appropriate.

<sup>3</sup> Your district may elect to employ a "designated agent of the district," if so, substitute it for "Board."

<sup>4</sup> ASBA strongly recommends that each district keep a record of all requests to be a "bidder."

<sup>5</sup> Names of vendors on the excluded parties list can be found at <https://www.sam.gov>

<sup>6</sup> For Federal purchases, be sure that your purchasing procedures include the different procedures for micropurchases, small purchase threshold purchases, and formal bids.

In accordance with A.C.A. § 15-3804 and 3805, your procedures will need to address how your district intends to ensure that the state goal of at least twenty percent (20%) of the purchases of food products by entities that receive at least twenty-five thousand dollars (\$25,000) of state funds and have a food service program is spent on local farm or food products. More information on what to include in your procedures may be found on page 38 of the USDA document found at [https://fns-prod.azureedge.net/sites/default/files/f2s/F2S\\_Procuring\\_Local\\_Foods\\_Child\\_Nutrition\\_Prog\\_Guide.pdf](https://fns-prod.azureedge.net/sites/default/files/f2s/F2S_Procuring_Local_Foods_Child_Nutrition_Prog_Guide.pdf).

<sup>7</sup>Any commodities purchased by the district through the TAPS program satisfies the state bidding requirements; however, for purchases with Federal funds, districts are required to demonstrate that an effort was made to determine that the taps purchase price is the best price. The verification effort may be demonstrated through an email, fax, letter, or written documentation of a telephone call.

Be aware that A.C.A. § 18-44-503 requires a district or education coop to receive a performance bond in the amount of the contract from a contractor for projects to repair, alter, or erect a public building, structure, or improvement that meets or exceeds the contract amount requiring the advertising of bids under A.C.A. § 22-9-203.

<sup>8</sup> This language is required by 2 C.F.R. § 200.321 and the process you will use to provide the preference should be clearly set forth in your purchasing procedures., which must include all of the following-

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) above.

<sup>9</sup> This is the school board if specified in this policy (see #<sup>2</sup> above) as the body to approve the purchase of commodities.

<sup>10</sup> Used school buses, over two years old as defined in A.C.A. § 6-21-306(a), are exempt from bidding requirements.

<sup>11</sup> A “sole source justification document” should be attached to the purchase order and maintained in the audit file for all commodities purchased as such. DESE stipulates the following seven (7) criteria that the justification must meet:

- Why the service or product is needed;
- The methods used to determine that a lack of responsible/responsive competition exists for the service or product;
- How it was determined that the provider possesses exclusive capabilities;
- Why the service or product is unique;
- Whether or not there are patent or property rights which make the required service or product unavailable from other sources;
- What the district would do if the provider/service product were no longer available;
- Any program considerations which make the use of a “sole source” critical to the successful completion of the district’s task.

<sup>12</sup> A.C.A. § 6-21-304 specifically states the parameters required within the appeal process. Your district could choose to alter the paragraph and how it intends to deal with the appeal and its resolution. An example would be to award a financial settlement to the appellant if the appeal is upheld. Another example would be to state, by policy, the length of time for the resolution of the appeal process.

<sup>13</sup> An example of when simply extending a contract without going through the bid process is prohibited includes certain purchase contracts for the child nutrition programs.

#### Legal References:

A.C.A. § 6-21-301, 303, 304, 305, 306, 307  
A.C.A. § 6-24-101 et seq.  
A.C.A. § 15-4-3801 et seq.  
A.C.A. § 18-44-503  
A.C.A. § 19-11-259  
A.C.A. § 19-11-801 et seq.  
A.C.A. § 22-9-203  
2 C.F.R. § 200.67  
2 C.F.R. § 200.319  
2 C.F.R. § 200.320  
2 C.F.R. § 200.321  
2 C.F.R. § 200.324  
48 C.F.R. § 2.101

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