

Purchases and Contracts

4:60-AP4 Administrative Procedure - Federal 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 4:60-AP1, *Purchases*, the following procedures apply to District procurement under federal awards.¹

Consult the Board Attorney regarding the legal requirements presented by this administrative procedure as well as before a contract is presented to the Board.²

Code of Conduct³

Board policies 2:100, *Board Member Conflict of Interest*, and 5:120, *Employee Ethics; 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 Standards⁴

- 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 will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. **Note:** A conflict between this regulation's requirements and the Illinois Criminal Code of 2012 may exist. See 720 ILCS 5/33E-2(i-5) and 5/33E-18 (prohibits bid stringing; violation is 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.
- C. The District may use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use 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 is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. **Note:** A conflict between this regulation's requirements and the Illinois 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. The District shall only award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. **Note:** State law requires award to the "lowest responsible bidder."
- F. The District shall maintain records sufficient to detail the history of procurement. 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.
- 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 Illinois Criminal Code of 2012 (720 ILCS 5/33E-9) requires approval of the Board or designee when a contract cost increases or decreases by \$10,000, *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.

Competition⁵

- A. All procurement transactions shall be conducted in a manner providing full and open competition consistent with the standards of State law (105 ILCS 10-20.21) and policy 4:60 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 or requests for proposals must be excluded from competing for such procurements. 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.
- B. The District shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. **Note:** State law may also encourage or discourage these preferences. Discuss these with the Board Attorney. See also Doyle Plumbing and Heating Co. v. Bd. of Educ., Quincy Pub. Sch. Dist. No. 172, 291 Ill.App. 3d 221 (4th Dist. 1997); Cardinal Glass 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. When contracting for architectural and engineering (A/E) services, 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. **Note:** The Board must also follow the Local Government and 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 material, product, or service to be procured.
 - a. Such description must not, in competitive procurements, contain features which unduly restrict competition.
 - b. 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.
 - c. Detailed product specifications should be avoided if at all possible.
 - d. 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.
 2. Identify all requirements which offerors must fulfill and all other factors to be used in evaluating bids and proposals.
- D. The District shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free 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.

Methods of Procurement⁶

The District shall use one of the following methods of procurement:

- 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 threshold⁷. 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 to be reasonable. **Note:** See 105 ILCS 5/10-20.21 and sample policy 4:60, *Purchases and Contracts*.
- 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 Threshold⁸. 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 contract⁹ (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. **Note:** 105 ILCS 5/10-20.21 requires "lowest responsible bidder." The sealed bid method is the preferred method for procuring construction, if the conditions in 2 C.F.R. §200.320(c)(1) apply. If sealed bids are used, the requirements in 2 C.F.R. §200.320(c)(2) apply. **Note:** 105 ILCS 5/10-20.21 requires sealed bids.
- 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 requirements in 2 C.F.R. §200.320(d) apply. **Note:** 105 ILCS 5/10-20.21 requires sealed bids.
- 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 circumstances in §200.320(f) apply. **Note:** 50 ILCS 510/ may conflict with this regulation.

Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms¹⁰

The District shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- C. 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;
- D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- E. 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
- F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (A) through (E) of this section.

Contract Cost and Price¹¹

- A. The District shall perform a cost or price analysis in connection with every procurement action 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 non-federal entity must make independent estimates before receiving bids or proposals.
- B. The District shall 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.
- C. 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 for the District under Subpart E, Cost Principles, of 2 C.F.R. Part 200.
- D. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Federal Awarding Agency¹² or Pass-Through Entity Review¹²

The District shall make available, upon request of the federal awarding agency¹³ or pass-through entity¹⁴ (ISBE):

- A. Technical specifications on proposed procurements where the federal awarding agency or pass-through entity believes such 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 §200.324(b) apply.

Bonding Requirements¹⁵

- A. For construction or facility improvement contracts or sub contracts exceeding the Simplified Acquisition Threshold¹⁶, the federal awarding agency or pass-through entity may accept the bonding policy and requirements of the District provided that the federal awarding 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 such contractual documents as may be required within the time specified.
 2. A performance bond on the part of the contractor¹⁷ for 100 percent of the contract¹⁸ price. A *performance bond* is one executed in connection with a contract to secure fulfillment of all the contractor's obligations¹⁹ under such contract.
 3. A payment bond on the part of the contractor for 100 percent of the contract price. A *payment bond* is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Contract Provisions²⁰

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*.

DATED: June 13, 2017

PRESS Footnotes

1. 2 C.F.R. §§200.318-200.326
2. Many legal issues will be solved by early and frequent consultation with the board attorney.
3. 2 C.F.R. §200.318(c).
4. 2 C.F.R. §200.318(d)-(k).
5. 2 C.F.R. §200.319.
6. 2 C.F.R. §200.320.
7. The *micro-purchase threshold* is set by the Federal Acquisition Regulation at 48 C.F.R. Subpart 2.1 (Definitions). It is \$3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation. 2 C.F.R. §200.67.
8. *Simplified acquisition threshold* means the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. Non-federal entities 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 at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$150,000, but this threshold is periodically adjusted for inflation. (Also see definition of 200.67 Micro-purchase.) 2 C.F.R. §200.88.
9. *Contract* means a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward (see 200.92 Subaward). 2 C.F.R. §200.22.
10. 2 C.F.R. §200.321. See also the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575/.
11. 2 C.F.R. §200.323.
12. 2 C.F.R. §200.324.
13. *Federal awarding agency* means the federal agency that provides a federal award directly to a non-federal entity. 2 C.F.R. §200.37.
14. *Pass-through entity* means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program. 2 C.F.R. §200.74.
15. 2 C.F.R. §200.325.
16. *Simplified acquisition threshold* means the dollar amount below which a non-federal entity may purchase property or services using small purchase methods. Non-federal entities 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 at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. 2 C.F.R. §200.88.

17. *Contractor* means an entity that receives a contract as defined in 200.22 Contract. 2 C.F.R. §200.23.

18. *Contract* means a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. The term as used in this part does not include a legal instrument, even if the non-federal entity considers it a contract, when the substance of the transaction meets the definition of a federal award or subaward (see 200.92 Subaward). 2 C.F.R. §200.22.

19. When used in connection with a non-federal entity's utilization of funds under a federal award, *obligations* means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-federal entity during the same or a future period. 2 C.F.R. §200.71.

20. 2 C.F.R. §200.326.