

SECTION: FINANCES

TITLE: PROCUREMENT – FEDERAL GRANTS

ADOPTED:

REVISED:

DERRY AREA SCHOOL DISTRICT

No. 626.5 PROCUREMENT – FEDERAL GRANTS

1. Purpose

The purpose of this policy is to ensure compliance with procurement laws and regulations for Federal grant money and contracts awarded.

2. Guidelines

While the federal rules provide a basic structure for each procurement method, the entity must have documented procurement policies which provide detail on the process by which all purchases are made. The district has outlined purchasing responsibility and methods of purchasing, price quotations and competitive bid requirements in the following Board policies:

- #610 – Purchases Subject to Bid/Quotation
- #611 – Purchases Budgeted
- #612 – Purchases Not Budgeted
- #613 – Cooperative Purchasing

Purchases up to \$3,000 (Micro-Purchase)

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed \$3,000. The micro-purchase method is used in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

To the extent practicable, the district distributes micro-purchases equitably among qualified suppliers.

Micro-purchases may be awarded without soliciting competitive quotations if the district considers the price to be reasonable. The district maintains evidence of this reasonableness in the records of all micro-purchases.

No. 626.5 PROCUREMENT – FEDERAL GRANTS

Purchases between \$3,000 and \$150,000 (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 \$150,000. If small purchase procedures are used, price or rate quotations are obtained from an adequate number of qualified sources.

Purchases Over \$150,000

Sealed Bids (Formal Advertising): For purchases over \$150,000, 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 following conditions apply:

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

If sealed bids are used, the following requirements apply:

- 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 state, local, and tribal governments, the invitation for bids must be publically advertised;
- 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;
- 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;
- A firm fixed price contract award must be made in writing to the lowest responsive and responsible bidder.

No. 626.5 PROCUREMENT – FEDERAL GRANTS

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. Any or all bids may be rejected if there is a sound documented reason.

Competitive Proposals: The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either affixed 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:

- 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;
- Proposals must be solicited from an adequate number of qualified sources; and
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

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.

For competitive proposals, EDGAR, through the U.S. Securities and Exchange Commission, requires recipients to have a written method for conducting technical evaluations of the proposals received and for selecting recipients.

2 C.F.R. § 200.323(a)

Contract/Price Analysis: The district performs a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

No. 626.5 PROCUREMENT – FEDERAL GRANTS

2 C.F.R. § 200.323(a)

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the district must come to an independent estimate prior to receiving bids or proposals.

2 C.F.R. § 200.323(b)

When performing a cost analysis, the administration negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is 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.

Noncompetitive Proposals (Sole Sourcing)

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:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or
- After solicitation of a number of sources, competition is determined inadequate.

Documentation must be submitted to the Business Office substantiating and justifying sole sourcing.

A cost or price analysis will be performed for noncompetitive proposals when the price exceeds \$150,000.

Full and Open Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 C.F.R. § 200.319. 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:

No. 626.5 PROCUREMENT – FEDERAL GRANTS

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- 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
- Any arbitrary action in the procurement process.

EDGAR, through the U.S. Securities and Exchange Commission, further requires the following to ensure adequate competition.

Geographical Preferences Prohibited

The district must 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. 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.

Prequalified Lists

The district must 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. Also, the district must not preclude potential bidders from qualifying during the solicitation period.

Solicitation Language

The district must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. 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. Detailed product specifications should be avoided if at all possible.

No. 626.5 PROCUREMENT – FEDERAL GRANTS

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.

Avoiding Acquisition of Unnecessary or Duplicative Items

The district must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration is given to consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, an analysis must be made of leases versus purchase alternatives, and other appropriate analysis to determine the most economical approach.

These considerations are given as part of the process to determine the allowability of each purchase made with federal funds.

Use of Intergovernmental Agreements

To foster greater economy and efficiency, the district enters into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

Use of Federal Excess Surplus Property

The district considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

Debarment and Suspension

The district awards contracts only 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. The district may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000, the district verifies that the vendor with whom the district intends to do business with is not excluded or disqualified.

No. 626.5 PROCUREMENT – FEDERAL GRANTS

Maintenance of Procurement Records

The district must maintain records sufficient to detail the history of all procurements. 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, the basis for the contract price (including a cost or price analysis), and verification that the contractor is not suspended or debarred.

Time and Materials Contracts

The district may use a time and materials type contract only (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the district is the sum of: the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the district must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Settlements of Issues Arising Out of Procurements

The district alone is responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the district of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Protest Procedures to Resolve Dispute

The district maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

2 C.F.R. Federal
Procurement System
Standards

Policy #626.4
Allowability of Cost

Policy #613
Cooperative
Purchasing

No. 626.5 PROCUREMENT – FEDERAL GRANTS

WHO MAY FILE THE PROTEST: Any bidder or prospective bidder who is aggrieved in connection with an Invitation for Bid (IFB) or Request for Proposal (RFP) from the school district or the award of a contract obtained through such a process may file a protest. Protests relating to cancellation of IFBs and RFPs and protest relating to the rejection of all bids are not permitted. A bidder is a person or organization that submits a bid in response to the IFB/RFP. A prospective bidder is one who has not submitted a bid.

1. **TIME FOR FILING:**

- A. If a protest is submitted by a prospective bidder, it must be filed within five business days after the prospective bidder knew or should have known of the facts giving rise to the protest. In no event may a prospective bidder be allowed to submit a protest after bid opening time.
- B. If a protest is filed by a bidder, the protest must be filed within five business days after the protesting bidder knew or should have known of the facts giving rise to the protest. Once the bid opening has occurred, the bidder has five business days to file a protest. The date of filing is the date of receipt of the protest by the school district.
- C. Any protests not filed on a timely basis will be disregarded.

2. **FORM OF PROTEST:**

- A. All bid protests must be in writing and filed with the Superintendent at the school district Administration Office.
- B. The protest must state all grounds upon which the protesting party asserts that the solicitation or award was improper. Issues not raised by the protesting party in the protest are deemed waived and may not be raised on appeal.
- C. The protesting party may submit with the protest any documents or information deemed relevant.

- 3. **NOTICE OF PROTEST:** If award has been made, the Superintendent shall notify the successful bidder or contractor of the protest. If the protest is received before award and substantial issues are raised by the protest, all bidders who appear to have a substantial and reasonable prospect of winning the award shall be notified and may file their agreement/disagreement with the Superintendent within three days after receipt of notice of the protest.

2 C.F.R. Part 200,
Appendix II (1) and 2
C.F.R. §§ 180.220 and
180.300

No. 626.5 PROCUREMENT – FEDERAL GRANTS

4. **STAY OF PROCUREMENT:** The Superintendent shall immediately decide, upon receipt of the protest, whether or not the solicitation or award should be stayed, or if the protest is timely received after the award, whether the performance of the contract should be suspended. If it is deemed that the protest has merit, the Superintendent shall not proceed further with the bid process or award of the contract, and shall suspend performance under the contract if awarded, unless the award of the contract without delay is necessary to protect the substantial interests of the school district.
5. **PROCEDURES:**
 - A. Within five days of receipt of the protest, the Superintendent shall submit to the protesting party a response to the protest. The protesting party then has five days to file a response.
 - B. The Superintendent shall review and decide the merits of the protest based on all documentation and information, including the initial protest, subsequent response, and any additional documentation provided. The Superintendent may, in his or her sole discretion, conduct a hearing.
 - C. If the protest occurred prior to the bid opening date, the Superintendent shall decide on the merits of the protest within a reasonable time period, and, if necessary, reschedule the bid award accordingly. If the protest occurred subsequent to the bid opening, the Superintendent shall decide on the merits of the protest prior to the final vote of award by the Board of Directors.
 - D. Within five days of making his/her decision, the Superintendent shall notify all affected parties in writing of his or her determination. The determination shall state the reason for the decision, and if the determination is a denial of the protest, inform the protesting party of its right to file an action in the Commonwealth Court within fifteen days of the determination mailing date.

