

SUBJECT: PURCHASING

I. The District's purchasing activities will be part of the responsibilities of the District's designated Business Office, under the general supervision of the Assistant Superintendent for Management Services whom the Board shall designate as the District's Purchasing Manager. As Purchasing Manager, the Assistant Superintendent for Management Services is authorized to delegate the District's normal, routine purchasing activities and functions to a person designated by the Board of Education who shall be known as the Assistant Purchasing Manager. All District purchasing shall comply with applicable laws and regulations of the State of New York and the Commissioner of Education. The purchasing process should enhance school operations and educational programs through the procurement of goods and services deemed necessary to meet District needs.

II. Principals Of Purchasing

A. Objective of the Board

The Board has the objective to assure the prudent and economical use of public monies in the best interest of the taxpayers. This means that when goods and services are required they must be of maximum quality at the lowest possible cost under the circumstances. Additionally, the purchasing process must guard against the appearance of and the actuality of and the opportunity for favoritism, improvidence, extravagance, fraud and corruption.

B. Governing Law – Competitive Bidding

General Municipal Law Section 103 mandates that purchase contracts for materials, equipment and supplies exceeding twenty thousand dollars (\$20,000) and public works contracts exceeding thirty-five thousand dollars (\$35,000) can be awarded only after compliance with the formal bid requirements set forth in the statute. For purposes of this policy, "public works" is an expenditure for fixed tangible works which have the primary objective of benefiting the public interest.

C. Exceptions to Competitive Public Bidding

When formal competitive bidding pursuant to General Municipal Law Section 103 is not required, the procurement of goods, services and public works must be accomplished in a manner which fulfills the Board's objective set forth above in paragraph "A." General Municipal Law Section 104-b requires the Board to adopt policies and procedures for procurements not subject to General Municipal Law Section 103. The policy or procedures, or both, shall require that adequate documentation be kept of the actions taken in connection with each method of procurement when formal bids are not required.

1. Best Value

Effective January 27, 2012, General Municipal Law (GML) Section 103 was amended to permit a school district or BOCES to award purchase contracts in excess of twenty thousand dollars (\$20,000) on the basis of "best value," rather than on the basis of the lowest responsible bid. The Board of

Education must adopt a resolution at a public meeting authorizing the award of bids based on “best value.” The Board of Education may also approve “best value” bid award recommendations on an individual bid basis at a scheduled public meeting. A best value award is one that optimizes quality, cost and efficiency, typically applies to complex services and technology contracts and is quantifiable whenever possible.

2. “Piggybacking” Law – Exception to Competitive Bidding

On August 1, 2012, General Municipal Law (GML) Section 103 was amended to allow school districts to purchase certain goods and services (apparatus, materials, equipment and supplies) through the use of contracts let by the United States or any agency thereof, any state, and any county, political subdivision or district of any state. The amendment authorizes school districts and BOCES to “piggyback” on contracts let by outside governmental agencies in a manner that constitutes competitive bidding “consistent with state law.”

This “piggybacking” is permitted on contracts issued by other governmental entities, provided that the original contract:

- a) Has been let by the United States or any agency thereof, any state (including New York State) or any other political subdivision or district therein;
- b) Was made available for use by other governmental entities and agreeable with the contract holder; and
- c) Was let in a manner that constitutes competitive bidding consistent with New York State law and is not in conflict with other New York State laws.

The “piggybacking” amendment and the “best value” amendment may not be combined to authorize a municipality to “piggyback” onto a cooperative contract which was awarded on the basis of “best value.” In other words, while a school district or BOCES may authorize the award of contracts on the basis of “best value,” it may not “piggyback” onto a purchasing contract awarded by another agency on the basis of “best value.”

D. The Board of Education subscribes to the following principles of purchasing:

1. Competition

District purchases shall be made without prejudice or favoritism, and in a manner that assures competitive awards that are in the best interest of the District. Except to the extent permitted by law, no Board of Education member or employee of the School District should have an interest in any District contract.

2. Requisitions

The requisition is a formal written request from a District employee for the purchase of supplies, equipment or public works. It should be remembered that the requisition is a request and not a guarantee that a purchase will actually be made.

3. Purchase Order

The purchase order is a document that authorizes a vendor to deliver described merchandise, materials or public works at a specified price. Purchase orders shall be issued only by the business office and signed by the Purchasing Manager or Assistant Purchasing Manager for all equipment, supplies, services or public works. No verbal orders or internet orders may be placed without approval of the Purchasing Manager or Assistant Purchasing Manager.

4. Procedures

Procedures shall be developed and administered by the Purchasing Manager for the requisitioning, purchasing, receipt, and distribution of the supplies, equipment or performance of public works. All purchases initiated by employees must follow these established procedures.

5. Visits

Visits by vendors to teachers during instructional hours are not permitted.

III. Purchasing Authority

A. The expenditure of district funds is the responsibility of the Board of Education. The purchasing authority of the Board of Education is vested with the Assistant Superintendent for Management Services. Appropriate District administrators shall be consulted in making purchasing recommendations to the Purchasing Manager and to the Board of Education for bid award recommendations. The Assistant Purchasing Manager shall handle routine purchasing in accordance with procedures established by the Assistant Superintendent for Management Services, consistent with all appropriate provisions of law.

B. No contracts for goods, services and public works shall be made by individuals or organizations in the school that involve expenditures without first securing approval for such contract from the Purchasing Manager/Assistant Purchasing Manager. Payment will not be made for goods, services or public works not approved by the Purchasing Manager/Assistant Purchasing Manager.

C. Contracts for professional services in excess of \$ 10,000 will be made only by resolution of the Board of Education and signed by the Board of Education president or the Superintendent on behalf of the Board of Education. For professional services contracts of \$10,000 or less, reference Regulation 5410R.2.

IV. Credit Cards

The Purchasing Manager is authorized to have issued in the name of the District credit cards to be utilized only for purposes expressly authorized by purchasing and/or other policy and District purchasing

procedures. Terms and conditions for the issuance of the particular card shall be in accordance with direction received by the Assistant Superintendent for Management Services with express authorization by a Board of Education resolution. The Purchasing Manager shall maintain a log indicating when and to whom a District credit card is provided. In addition to signing credit receipts on behalf of the District, the user of the card shall also personally endorse the credit card receipt.

V. Board of Education Approval of Purchasing (Competitive Bidding)

When competitive bidding is required by General Municipal Law Section 103, the Board of Education shall have reported to it all bids for the purchase of equipment, furniture, supplies and services. It shall take action approving contracts to the lowest responsible bidder meeting specifications unless it chooses to reject the bids. In case of a tie bid, an award may be made to either bidder.

VI. Administrative Authority for Purchasing

A. The Purchasing Manager or Assistant Purchasing Manager each shall have authorization to purchase goods, services and public works not subject to the requirements of Section 103 of the General Municipal Law. When purchases or annual anticipated purchases for items or categories of items reach statute-specified amounts, bid specifications shall be developed and bids taken as required by statute. The Board of Education, in its sole discretion recognizes that the solicitation of alternative proposals or quotations may not be in the best interest of the School District as per the Office of the State Comptroller's Financial Management Guide, Issue 1973, Revised 12/93, Subsection 8.3020, page 3; therefore it is deemed that the competitive bidding requirements of General Municipal Law, Section 103 now and hereinafter amended, shall not apply for the purchase of the performance of the following services:

- a) Legal
- b) Independent Auditing
- c) Employee Benefits Administration
- d) Architectural/Engineering/Project Management
- e) Insurance
- f) Data Processing Software
- g) Actuarial
- h) Financial advisory
- i) Demographic
- j) Other Professional Services in accordance with this sub-section

B. The Purchasing Manager shall submit quarterly to the Board a report of all professional services contracts (including sole source) which report shall identify each provider, the maximum contract amount, the aggregate amount paid from commencement of services to the quarterly report date, the contract expiration date and the budget code.

VII. Procurement of Goods, Services and Public Works (Competitive Bidding not Required)

A. In accordance with General Municipal Law Section 104-b and the exceptions set forth in General Municipal Law Section 103, the Board of Education recognizes its responsibility to ensure the development of

procedures for the procurement of goods, services and public works not required by law to be made pursuant to competitive bidding requirements. These goods, services and public works must be procured in accordance with the procedures established in the purchasing regulation, which procedures shall:

- 1) Assure the prudent and economical use of public moneys in the best interest of the taxpayer.
- 2) Facilitate the acquisition of goods, services and public works of maximum quality at the lowest possible cost under the circumstances; and
- 3) Guard against favoritism, improvidence, extravagance, fraud and corruption; provided however, nothing herein prohibits purchases that are legal under Section 802 of the General Municipal Law.

B. These procedures shall contain, at a minimum, provisions which:

- 1) Prescribe a process for determining whether a procurement of goods, services and public works is subject to competitive bidding and if it is not, documenting the basis for such determination;
- 2) With certain exceptions (purchases pursuant to General Municipal Law, Section 186; State Finance Law, Sections 175-a and 175-b; State Correction Law, Section 184; or those circumstances or types of procurements set forth in (6) of this section), provide that alternative proposals or quotations for goods, services and public works shall be secured by use of written request for proposals, written quotations, verbal quotations or any other method of procurement which furthers the purposes of Section 104-b of General Municipal Law; the type and quantity of such proposals or quotes to be in accordance with the purchasing regulation;
- 3) Set forth when each method of procurement will be utilized;
- 4) Require adequate documentation of actions taken with each method of procurement;
- 5) Require justification, documentation and a statement of reasons for awarding a contract to other than the lowest responsible dollar offer, and a statement of reasons for awarding a contract; and
- 6) Set forth any circumstances when, or the types of procurement for which, the solicitation of alternative proposals or quotations will not be in the best interest of the District.
- 7) Prescribe a process for approving any purchase of goods, services or public works permitted under Section 802 of the General Municipal Law.

C. Other Methods Not Requiring Competitive Bidding:

1. Public Emergency arising out of an accident or other unforeseen occurrence or condition where circumstances require immediate action: Solicitation of quotes or estimate, to the extent practicable under the circumstances.

2. **Second-Hand Equipment from Federal and State Governments:** Section 103(6) of the General Municipal Law provides a statutory exception to the competitive bidding requirements by permitting the purchase of surplus and second-hand supplies, materials or equipment without competitive bidding from the federal or state governments or from any other political subdivision or public benefit corporation within the state.
 3. **Certain Food and Milk Purchases:** Section 103(a) and (10) of the General Municipal Law provides a statutory exception to the competitive bidding requirement by permitting a Board of Education to separately purchase eggs, livestock, fish and dairy products (including milk), juice, grains and species of fresh fruits and vegetables directly from producers, growers or certain processors without bidding.
 4. **Sole Source:** Section 103 of the General Municipal Law provides a statutory exception to the competitive bidding requirement in limited situations where there is only one possible source from which to procure goods or services required in the public interest (such as in the case of certain patented goods or services or public utility services).
- D. Any unintentional failure to fully comply with these provisions shall not be grounds to void action taken or give rise to a cause of action against the District or any District employee or officer.
- E. The Board of Education may solicit comments concerning the District's policies and procedures from those employees involved in the procurement process. All policies and procedures regarding the procurement of goods and services shall be reviewed periodically by the Board.

VIII. Alternative Formats for Instructional Materials

A. Instructional Materials

Preference in the purchase of instructional materials will be given to vendors who agree to provide materials in a usable alternative format (i.e., any medium or format, other than a traditional print textbook, for presentation of instructional materials that is needed as an accommodation for each student with a disability, including students requiring Section 504 Accommodation Plans, enrolled in the School District). Alternative formats include, but are not limited to, Braille, large print, open and closed captioned, audio or an electronic file in an approved format as defined in Commissioner's Regulations.

B. District Plan - Alternative Format

The District will develop a plan by July 1, 2002, to ensure that all instructional materials to be used in the schools of the District are available in a usable alternative format for each student with a disability, including students requiring Section 504 Accommodation Plans, in accordance with his or her educational needs and course selection, at the same time as such instructional materials are available to non-disabled students. The District Plan shall include those provisions mandated by Education Law and Commissioner's Regulations.

IX. Geographic Preference in Procuring Local Agricultural Products

Schools participating in Child Nutrition Programs such as the National School Lunch Program, School Breakfast Program and/or Special Milk Program are encouraged to purchase unprocessed locally grown and locally raised agricultural products. A school district may apply an optional geographic preference in the procurement of such products by defining the local area where this option will be applied. The intent of this preference is to supply wholesome unprocessed agricultural products that are fresh and delivered close to the source.

A geographic preference established for a specific area adds additional points or credits to bids received in response to a solicitation, but does not provide a set-aside for bidders located in a specific area, nor does it preclude a bidder from outside a specified geographic area from competing for and possibly being awarded a specific contract.

Education Law Sections 305(14), 1604, 1709, 1950, 2503,
2554 and 3602

General Municipal Law Articles 5-A and 18

8 New York Code of Rules and Regulations

(NYCRR) Sections 170.2, 200.2(b)(10),

200.2(c)(2) and 200.2(i)

Jered v. NYC Transit Authority, 22 NY2d 187

State Comptroller Opinion 88-35

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