

## Procurement

### Procurement Policies and Procedures

Whenever the law does not require a school district to provide goods and services by competitive bidding, the goods and services must be procured in a manner so as to assure the prudent and economical use of public monies in the best interests of the residents. Goods and services must be bought so as to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption. To further these objectives, the Board of Education, by resolution, shall adopt internal policies and procedures governing all procurement of goods and services which are not required to be made pursuant to the competitive bidding requirements of Section 103 of General Municipal Law (GML) or of any other general, special or local law (Section 104b-GML). The Board of Education will meet annually with the purchasing agent to review and amend the purchasing policy as needed.

- 1) At the Annual Organizational Meeting, the Board of Education formally appoints a purchasing agent in accordance with Section 170.2(b) of the Regulations of the Commissioner of Education. Only the person designated by the Board as purchasing agent may commit the District for a purchase. The purchasing agent shall be responsible for developing and administering the purchasing program of the school district.
- 2) The purchasing agent must provide that, except for procurement made pursuant to Section 103 or Section 104 of the General Municipal Law, Section 175 of the State Finance Law, Section 184 of the Correction Law, and the policies and procedures adopted pursuant to Section 104-b of the General Municipal Law, alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals, written quotations, verbal quotations or any other method of procurement which furthers the purposes of Section 104-b and of Section 103 of the General Municipal Law in accordance with the dollar limits for the use of written and verbal quotation set forth on Chart B attached.
- 3) Purchases shall be made through available State contracts of the Division of Standards and Purchase, Office of General Services (OGS), whenever such purchases are in the best interest of the school district.
- 4) School districts are permitted by General Municipal Law Section 103 (3) to take advantage of county purchasing contracts provided that the program has been authorized by the board of supervisors of the county legislature. Where permitted, purchases shall be made from county contracts whenever such purchases are in the best interest of the school district.
- 5) The purchasing agent is authorized to issue purchase orders without prior approval of the Board of Education where normal bidding procedures are not required by law, and when budget appropriations are adequate to cover such obligations.

- 6) A statement of "General Conditions," as approved by the Board of Education shall be included with all specifications submitted to suppliers for their bids. These general conditions shall be incorporated in all contracts awarded for the purchase of materials, equipment, and supplies.

### Competitive Bidding

The General Municipal Law requires competitive bidding on all purchase contracts involving an expenditure of more than \$20,000 annually for items of materials, supplies, and equipment. This is generally interpreted as covering groups of items as well as individual items. There must be legal advertisement if a single item to be purchased exceeds \$20,000 or the formal bidding aggregate cost of an item or reasonable commodity grouping estimated to be purchased in a fiscal year would exceed that figure. (Opinion of the State Comptroller 59-647) The limitation on public works contracts is \$35,000 before formal advertisement is required. Public works contracts apply to those items or projects involving labor or both materials and labor. The law does not cover professional service contracts such as for insurance, electricity, water, or services performed by engineers, architects, and attorneys.

- A. Bid Award: The bid must be awarded to the lowest bidder unless one or more of the following applies:
- a. The bidder is not *responsible*. This includes, but is not limited to, the following: Delivery experience, poor quality, packaging restriction, etc.
  - b. The bid is not *responsive*. This includes when a bidder takes exceptions to the Districts terms, conditions and specifications; and, thus, would not be in the best interest of the District.
  - c. The contract is awarded based on "best value." Whenever any contract is awarded based on the "best value" standard, the Board of Education shall comply with the March 19, 2014 Resolution entitled "Contracts – Bidders Based on Best Value."

### Awards to Other Than Lowest Bidder

- A. Whenever any contract is awarded to other than the lowest bidder, as set forth above, the reasons such an award furthers the purpose of General Municipal Law § 104-b as set forth herein above shall be documented as follows:

Notations and/or copies of all documents, and notations of verbal or other data justifying why any purchase is made from other than the lowest responsible vendor or contractor submitting a complying quotation or proposal, as being in the best interest of the government unit, shall be included with the purchase records. If full compliance with this provision is not practical, a written note of explanation shall be made and placed with the purchase records.

### "Piggybacking"; Cooperative Purchasing

The Board of Education will consider participation in cooperative bidding/purchases with other school districts, BOCES or other governmental agencies whenever feasible and legal for the various needs of the District.

The District may “piggyback” onto another governmental contract in accordance with General Municipal Law and upon consultation with the District’s legal counsel.

- A. Contract subject to Piggybacking: Pursuant to Section 103(16) of the General Municipal Law, purchases of goods and services may be made through the use of contracts let by the United States or any agency thereof, any state or any other political subdivision or district therein. The contract must be let in a manner that is consistent with New York State competitive bidding law (public solicitation of sealed bids, bid specifications, award to lowest responsible bidder or best value bidder, etc.) and the contract must be made available for use by other governmental entities. Piggybacked contracts are not subject to the competitive bidding requirements of Section 103 of the General Municipal Law.
- B. Authorization to Piggyback: Pursuant to and in accordance with GML section 103(16), the District is hereby permitted to “piggyback” off of other municipal contracts, as described above, as well as, in the District’s discretion, open up its own purchase and public works contracts to other appropriate municipalities.

#### Local Purchasing

It is the intention of the Board of Education to purchase materials and supplies of quality at the lowest possible cost through widespread competition. If all other conditions are equal, purchases will be made from local merchants.

#### Procedures

Procedures consistent with law and with this policy shall be established.

#### Alternative Formats

When purchasing instructional materials, the District shall give preference to those vendors who demonstrate or affirm that the instructional materials can be provided to the District in alternative formats as required by General Municipal Law, Sections 103 (1) (5) and 104.

#### Seasonal Items

The law requires advertising for seasonal items. A season's supply of fuel oil for delivery on demand or the purchase of school lunch supplies, milk and ice cream, bread and meats as required are bid where consumption of such items is above the legally required dollar limit.

#### Advertising

Formal advertising is required when the annual purchases exceed the dollar limit established by the bid law. At least five days must elapse between the first publication of an advertisement and the date specified for the opening of bids.

### Standardization of Equipment

Section 103, Subdivision 5 of the General Municipal Law makes it possible for a Board of Education to standardize on a particular type of equipment, material, or supplies by adopting a resolution affirming that there is need for standardization. The resolution shall contain a full explanation of the reasons for its adoption. However, this action does not eliminate the necessity of advertising for bids and awarding the contract to the lowest responsible bidder furnishing the required security. The words "or equal" -- "or equivalent" are not required in the specifications. The make or model may be specified and anyone who can furnish the item may bid.

### Textbooks

The Office of Counsel of the State Education Department has indicated that competitive bids are not required on new textbooks when the publisher is the sole source of supply.

### Emergencies

Emergency purchases without bidding are permitted under the General Municipal Law. A public emergency may arise out of an accident or other unforeseen occurrence which could affect the public property, life, health, or safety and where immediate action cannot await competitive bidding.

### Opening of Bids

Advertised bids must be opened publicly and read aloud. Bidders and/or other interested persons may attend such openings. The purchasing agent or any other designated person should open bids. If there are no spectators present, it is advisable to have another person from the Business Office or administrative staff present as witness.

- A. Award of Contract: If the Board of Education is in session when bids are opened, a contract may be awarded at once. If the Board believes there may be collusion between bidders, all bids may be rejected and advertised.

### Lease-Purchase Agreements for Instructional Equipment

Section 1725-a of the Education Law authorizes school districts to enter into lease-purchase agreements for instructional equipment subject to the bidding requirements of the General Municipal Law. This section also provides that the Commissioner of Education shall promulgate regulations defining "instructional equipment" and that any such lease-purchase agreement be approved before execution.

In accordance with the requirements regarding definition, districts must have the prior written approval of the Commissioner for instructional equipment and prior approval of lease-purchase agreements.

The Commissioner's Regulations state:

- a) The Board of Education of any school district may enter in agreements for the lease-purchase of instructional equipment in accordance with Section 725-a of the Education Law and this section, with the payments to be applied against the purchase price of the equipment.

- b) All such lease-purchase agreements shall be subject to written approval of the Commissioner before execution. Applications for approval of lease purchase agreements shall be in a form prescribed by the Commissioner and shall be submitted no more than 90 days and no less than 30 days prior to the date of execution of the agreement. A variance may be granted from the time limitations for submission of such applications upon a showing of good cause satisfactory to the Commissioner.
- c) As used in Education Law, Section 1725-a and this section, instructional equipment means instruments, machines, apparatus or other types equipment which are used directly in the instruction of students and which:
  - 1. Are not consumed in use and retain their original shape and appearance with use;
  - 2. Are not expendable items such as textbooks or supplies;
  - 3. Are not capital improvements, as such term is defined in Subdivision 9 of Section 2 of the Local Finance Law; and
  - 4. Do not lose their identity through incorporation into a different or more complex unit.

#### Installment Purchase Contracts

General Municipal Law, Section 109-b authorizes the use of installment contracts for the purchase of equipment, machinery and apparatus. Chapter 137 of the Laws of 2003, amended Section 109-b, school districts are authorized to enter into lease-purchase contracts and to obtain financing from a source other than the vendor, including the issuance of Certificates of Participation (COPS).

- a) Competitive bidding required - Subdivision 6 of Section 109-b mandates that all installment purchase contracts contain the "executory clause" set forth in the statute as follows: "This contract shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account thereof shall be incurred by the purchaser beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract."
- b) Multi-Year Service Contracts should not be entered into in the absence of specific legislative authority. The legislative authority currently available to school districts, Subdivision 14 of Section 305 of the Education Law, provides for multi-year transportation and cafeteria service contracts only. Contracts for such items as cleaning/maintenance, trash removal, maintenance of clock systems, care of grounds and snow plowing, should:
  - 1) Be for a single year only;
  - 2) Be bid as a public works contract;
  - 3) Require the payment of minimum wage rates and supplements; and
  - 4) Specify which party provides equipment and supplies. A contract for the purchase of management services for cleaning and maintenance of school buildings would also need to meet the above conditions unless exempt as a professional service under General Municipal Law. In any case, where contracts include the purchase of supplies, materials and equipment, the one year contract limitation and the bidding requirements of Section 103 of the General Municipal

Law apply. The unintentional failure to fully comply with the provisions of this General Municipal Law Section 104-b, shall not be grounds to void action taken or give rise to a cause of action against Chenango Valley Central District or any officer or employee thereof.

(See following chart)

Chart A – Bidding Guide

<b>Contract Type</b>	<b>Bidding</b>	<b>104-b Non-Bid</b>
Purchase Contract – above 20,000	X	
Purchase Contract – below 20,000		X
Contract for Public Work – above 35,000	X	
Contract for Public Work – below 35,000		X
Agencies for Blind or Severely Handicapped		X
State Contracts		X
County Contracts		X
Emergencies		X
Sole Source (patented or monopoly)		X
Professional Services		X
True Leases	X	
Insurance		X
Second-hand Equipment from Another Govt.		X
Certain Food & Milk Purchases		X

<b>Contract Type</b>	<b>Minimum # of written quotes</b>	<b>RFP</b>	<b>Other</b>
Purchase Contract – below 20,000			
0-2,999	1 (may be verbal)		
3,000-9,999	2		
10,000-19,999	3		
Contracts for Public Work (below \$35,000)			
0-1,999	1 (may be verbal)		
2,000-9,999	2		
10,000-34,999	3		
Emergencies			x
Insurance		x	
Professional Services		x	
Second-hand Equipment			x
Certain Food & Milk Purchases			x
Sole Source			x

## **PURCHASES DIRECTLY CHARGED TO A FEDERAL AWARD**

To the extent that its requirements are not already included in this Policy, the District will comply with the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, ("Uniform Guidance") when making purchases directly charged to a federal award. The District's contracts with respect to these purchases will contain the applicable provisions set forth in Appendix II to Part 200, Contract Provisions for Non- Federal Entity Contracts under Federal Awards.

As required by the Uniform Guidance, the below provisions apply only to procurements for goods and services that are directly charged to a federal award and are to be applied in addition to all other provisions set forth above in this Policy. The below provisions do not apply to indirect costs.

### **A. GENERAL PROCUREMENT STANDARDS**

- (a) The District will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (b) (1) The District will maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. A conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the District may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct will provide for the possibility of disciplinary action for violations of such standards by officers, employees, or agents of the District.
- (c) The District's procedures will avoid acquisition of unnecessary or duplicative items. Consideration should 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.



- (d) The District will 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.
- (e) (1) The District may use a "time and materials type contract" only after it determines that no other contract is suitable and provided that the contract includes a ceiling price that the contractor exceeds at its own risk. "Time and materials type contract" means a contract for which the cost to the District is the sum of:
  - (i) The actual cost of materials; and
  - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.(2) 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 will set a ceiling price that the contractor exceeds at its own risk. Further, the District will assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (f) The District alone will 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. 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 pursuant to its contracts. The Federal awarding agency will not substitute its judgment for that of the District unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority with proper jurisdiction.

## B. COMPETITION

- (a) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of this policy and applicable law. 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 will be excluded from competing for those procurements. Some of the 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 will 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. 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.
- (c) The District will have written procedures for procurement transactions. These procedures will ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features that 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, will set forth those minimum essential characteristics and standards to which it will conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. 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 will be met by offers will be clearly stated; and

- (2) Identify all requirements which the offerors will fulfill and all other factors to be used in evaluating bids or proposals.
- (d) The District will ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the District will not preclude potential bidders from qualifying during the solicitation period.

C. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES (SMWBE) AND LABOR SURPLUS AREA FIRMS

- (a) The District will take all necessary affirmative steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used when possible.
- (b) Affirmative steps will include:
  - (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) of this section.

#### D. FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW

- (a) The District will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes that review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the District desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with the review usually limited to the technical aspects of the proposed purchase.
- (b) The District will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents (for example, requests for proposals or invitations for bids, or independent cost estimates).
- (c) The District is exempt from the pre-procurement review in paragraph (b) above if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of the Uniform Guidance.
  - (1) The District may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews will occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
  - (2) The District may self-certify its procurement system. Such self-certification will not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the District that it is complying with these standards. The District will cite specific policies, procedures, regulations or standards as being in compliance with these requirements and have its system available for review.