



**Seminole County  
Public Schools**

# **PURCHASING PROCEDURES MANUAL**

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The School Board of Seminole County, Florida  
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The mission of the Seminole County Public Schools is to ensure that all students acquire the knowledge, skills, and attitudes to be productive citizens.

# TABLE OF CONTENTS

- I. FOREWORD
- II. MISSION
- III. STANDARDS OF ETHICAL CONDUCT
- IV. GOVERNING REGULATIONS
  - A. School Board Polices
  - B. State Board of Education Rules
  - C. Florida Statutes
  - D. State Requirements for Educational Facilities (SREF)
  - E. Federal Grant Guidelines
- V. PURCHASING AUTHORITY
  - A. Purchase Order Approval Authority
- VI. COMPETITION REQUIREMENTS & THRESHOLDS
  - A. Purchases Less Than \$25,000.00
  - B. Purchases \$25,000.00 and Less Than \$50,000.00
  - C. Purchases \$50,000.00 or Greater
- VII. COMPETITIVE SOLICITATIONS
  - A. Invitation to Bid (ITB)
  - B. Request for Proposal (RFP)
  - C. Invitation to Negotiate (ITN)
  - D. Request for Statement of Qualifications (SOQ) - Non-CCNA
  - E. Request for Statement of Qualifications (RFQ) - CCNA
  - F. Design-Build (DB)
  - G. Public Advertisements and Notices
  - H. Additional Competitive Solicitation Process and Document Requirements
  - I. Protests
- VIII. EXCEPTIONS TO COMPETITION / COMPETITIVE SOLICITATIONS
  - A. Bids Waived Purchases
  - B. Confirmation Purchases
  - C. Cooperative Bids
  - D. Direct Negotiation
  - E. Emergency Purchases
  - F. Grant Funded / State / Federal Contracts
  - G. Piggybacking
  - H. Pooled Purchases
  - I. Pride / Respect
  - J. Regulated Utilities or Government Franchised Services
  - K. Single / Sole Source Purchases
  - L. State Contracts / State Purchasing Agreements
- IX. CONTRACTS / AGREEMENTS
  - A. Contractual / Agreement Approval Authority
- X. PURCHASING CARD PROGRAM

- XI. INSURANCE AND FINGERPRINTING REQUIREMENTS**
  - A. Insurance Requirements**
  - B. Fingerprinting / Background Screening Requirements**
  
- XII. CONTRACT ADMINISTRATION**
  - A. Contracts Types**
  - B. Contract Administrator**
  - C. Post Award Activities**
  - D. Delivery, Inspection, Acceptance and Rejection**
  - E. Invoices and Payments**
  - F. Contract Modifications (Amendments and Change Orders)**
  - G. Contract Renewal and Extension**
  - H. Closing / Cancellations of Purchase Orders and Contracts**
  - I. Contract Terminations**
  - J. Vendor Performance Complaints**
  - K. Other Contract Administration Factors**
  
- XIII. GRANTS PROCEDURES: PURCHASING GOODS AND SERVICES WITH FEDERAL FUNDS**
  
- XIV. FEMA APPLICANT COMPLIANCE WITH PROCUREMENT REQUIREMENTS**
  
- XV. FEDERAL GRANT EXHIBITS**
  
- XVI. DEFINITIONS**

## **I. FOREWORD**

The purpose of this manual is to provide all School Board of Seminole County (SBSC) Schools and Departments with the policies and procedures to be followed related to all procurement activities and to assist School District employees in the performance of their duties. It is intended to serve as a guide for all School District employees who are directly or indirectly associated with the purchasing functions of the School District. These procedures are governed by and in accordance with School Board Policies, State Board of Education Rules, applicable Florida Statutes and State Requirements for Educational Facilities.

Any questions regarding the interpretation of these policies and procedures should be directed to the Purchasing and Distribution Services Department. It shall be the responsibility of the Director of Purchasing and Distribution Services to create, implement and maintain the Purchasing Procedures Manual.

## **II. MISSION**

Our mission is to support our customers, the schools, departments and special centers, students, teachers and administrators by:

- Maximizing the value of the products and services purchased.
- Stocking and distributing quality supplies at discounted prices.
- Assure prompt and accurate delivery of textbooks.
- Assure internal mail services that are efficient and reliable.
- Disposing of surplus property in a cost effective manner and to maximize revenue.

We are committed to our mission while maintaining high ethical standards and a fair and open procurement process. The department is committed to observing all applicable laws, rules and regulations as promulgated and amended by the School Board of Seminole County Florida, the State of Florida, and the United States Government.

## **III. STANDARDS OF ETHICAL CONDUCT**

All employees of the School District, regardless of their position are bound by the same ethics as outlined in School Board Policies 1113, 1129, 1210, 4113, 4129, 4210, and 4214, and Florida Statutes, Chapter 112, Part III, Code of Ethics for Public Officers and Employees. School Board Policies are designed to create a culture of honesty and integrity that will help the School District meet its goal of providing a safe environment and high quality education to all of the School District's students.

Compliance with all School Board Policies, Florida Statutes related to standards for ethical conduct and maintaining a moral personal code of ethics is imperative for any and all School District personnel who perform or are in any way associated with purchasing functions. Personnel involved in purchases of goods and services for the School District reflect their own reputation and the reputation of the School District through dealings and contacts with customers and vendors. All have a responsibility to maintain a high ethical standard of conduct and a reputation for courtesy and fair dealings. As a representative of the School District, in a purchasing capacity, a reputation of fairness and honesty is key to establishing a professional atmosphere in which decisions and evaluations are based on sound business judgment. Each transaction shall be handled objectively, without favoritism or discrimination, and without seeking or dispensing personal favors.

The School Board of Seminole County has adopted the following principles as it relates to the procurement process:

- To comply with the letter and spirit of the laws governing the purchasing function including applicable Federal and State rules and regulations and School Board Policy and remain alert to the legal ramifications of purchasing decisions.
- To represent the School Board of Seminole County, Florida in an exemplary manner by diligently following the lawful instructions of the Board, using reasonable care and only the authority granted, and avoiding the intent and appearance of unethical or compromising practices in relationships, actions and communications.
- To buy without prejudice, seeking to obtain the maximum ultimate value for each dollar of expenditure and encouraging all segments of society by extending an opportunity to participate to minority, veteran, and small businesses.
- To handle information that may be considered confidential or proprietary to the School Board and/or its suppliers with due care and proper consideration of ethical and legal ramifications and government regulations.
- To prohibit soliciting or accepting gifts and gratuities from present or potential suppliers which might influence or appear to influence purchasing decisions; to subscribe to and work for honesty and truth in buying and selling; and to denounce all forms and manifestations of commercial bribery.
- To refrain from any private business or professional activity that may present a conflict of interest in carrying out the purchasing duties assigned by the School Board.

#### **IV. GOVERNING REGULATIONS**

Due to the dynamic nature of these rules, they are not printed in their entirety, but rather referenced only by number. You may view the applicable rules by following the links below:

##### **A. School Board Policies:**

<https://www.scps.k12.fl.us/district/school-board/policies-procedures/>

6320 - PURCHASING AND CONTRACTING FOR COMMODITIES AND CONTRACTUAL SERVICES

6320.02 - PUBLIC PRIVATE PARTNERSHIP FEE SCHEDULE

6322 - CONSTRUCTION CONTRACTING AND BIDDING

6324 - CONE OF SILENCE

6325 - PROCUREMENT – FEDERAL GRANTS FUNDS

6326 - BID PROTESTS

6330 - ACQUISITION OF PROFESSIONAL SERVICES - CCNA, CM and Design-Build

6334 - PREQUALIFICATION OF CONTRACTORS FOR EDUCATIONAL FACILITIES CONSTRUCTION

6345 - CHANGE ORDERS - PROFESSIONAL, CONSTRUCTION MANAGEMENT, PROGRAM MANAGEMENT AND DESIGN-BUILD SERVICES

6423 - USE OF CREDIT CARDS (PURCHASING CARDS)

6440 - COOPERATIVE PURCHASING

6450 - LOCAL PURCHASING

6460 - VENDOR RELATIONS

6470 - PAYMENT FOR GOODS AND SERVICES

6540 - EMPLOYMENT OF CONSULTANTS

6610 - INTERNAL ACCOUNTS

6840 - AUDIT COMMITTEE

- B. State Board of Education Rules** <https://www.flrules.org/>
  - 1. State Board of Education Rule 6A-1.012 – Purchasing Policies
  - 2. State Board of Education Rule 6A-1.013 – Pool Purchases
- C. Florida Statutes** <http://www.leg.state.fl.us/statutes/>
  - 1. FS 112.313 – Standards of Conduct For Public Officers & Employees; Doing business with one’s agency
  - 2. FS 119.071 – Inspection, Examination And Duplication Of Public Records
  - 3. FS 120.57(3) –Procedures for Resolution Of Bid Protests
  - 4. FS 218.70 – Local Government Prompt Payment Act
  - 5. FS 286.11 – Public Meetings & Records; Public Inspection
  - 6. FS 287.084 – Preference to Florida Businesses
  - 7. FS 287.087 – Preference to Business With Drug-Free Workplace Program (Tie Bids)
  - 8. FS 287.133 – Public Entity Crime
  - 9. FS 1010.04 – Purchasing
- D. State Requirements for Educational Facilities (SREF)** <http://www.fldoe.org/finance/educational-facilities/>
- E. Federal Grant Guidelines** <https://federalregister.gov/d/2017-09909>. The School Board chose to take the waiver until June 30, 2018 and use the current procurement standards for all of the prior fiscal years as documented within this internal procedures manual. The procurement standards in 2 CFR 200.317 through 200.326 were effective on July 1, 2018 and are documented in this procedures manual.

**V. PURCHASING AUTHORITY**

- A.** All procurement of supplies, materials, equipment, and services paid for from School District funds, shall be the responsibility of the Purchasing and Distribution Services Department under the general supervision of the Superintendent or designee.
- B. Purchase Order Requests (POR)** are entered into the Oracle/PeopleSoft Purchasing system and routed systematically through an approval workflow process which may include the Principal/Department Director, Project and Fund approvers, Finance and ultimately the Purchasing Department. All PORs valued over \$25,000 will automatically be routed to the Director of Purchasing for final review and approval. All PORs in excess of the Board threshold and not otherwise exempted will be submitted for School Board approval and released only after approved by the Board at a public School Board meeting.

**VI. COMPETITION REQUIREMENTS & THRESHOLDS**

The purchases of like commodities or contractual services shall not be divided / split so as to avoid / circumvent these monetary threshold requirements.

- A. Purchases Less Than \$25,000.00**
  - 1. Approval of PORs under \$25,000 is subject to Purchasing Department discretion. If the purchase is \$10,000 or greater and less than \$25,000, and no contracts are available, three written competitive quotes are required unless the Director of Purchasing and Distribution Services or designee approves otherwise.
  - 2. Factors used to determine the requirement of additional quotes shall include but not be limited to the following:
    - a. The availability of competing sources.
    - b. The availability of comparable or alternative products.
    - c. Larger than normal quantity of a single item.
    - d. The opportunity to combine multiple POR’s to take advantage of quantity discounts.
    - e. A new item(s) with no prior experience; or

- f. Utilize existing solicitation, term contract, state contract, piggyback, sole source, or other exemption as specified herein. Additional approval requirements may be required for exemptions to competition.

**B. Purchases Greater Than \$25,000.00 and Less Than \$50,000.00**

1. A minimum of three (3) written quotes must be solicited.
2. Or utilize existing solicitation, term contract, state contract, piggyback, sole source, or other exemption as specified herein. Additional approvals may be required for exemptions to competition.
3. Quotes shall be awarded to the lowest, responsive, responsible vendor.
4. Schools and Departments are encourage to utilize the Request for Quote Form located at: <http://insider.scps.k12.fl.us/purchasing/>, or request assistance in obtaining quotes from the Purchasing and Distribution Services Department. All quotes should be scanned into the Oracle/PeopleSoft Purchasing System at time a POR is entered.
5. Quotes shall be requested for like items and/or services.
6. Fax or email responses are acceptable as a written response.
7. A written "No Quote" is acceptable and may count as a solicited quote.
8. Screen prints from websites or advertisements do not constitute as a written quote.
9. Copies of quotes must be received by the Purchasing Department prior to approval of the POR as they will become back up documentation to the Purchase Order.

**C. Purchases \$50,000.00 Or Greater**

1. Competitive Solicitations shall be utilized for the purchases of like commodities or contractual services which aggregate \$50,000.00 or greater per year. The Superintendent is authorized to approve competitive solicitations if the cost is less than \$100,000. Board approval of Competitive Solicitations is required if the cost is \$100,000 or greater.
2. Exemptions to the Competitive Solicitation requirement include the utilization of existing solicitations, piggybacks on state, school district, city or county governmental agencies, community colleges, federal agencies, the public or governmental agencies of any state, or from state university system cooperative solicitations, sole source postings, or other exemptions as specified herein. School Board approval may be required for exemptions to competition, if not already obtained.
3. Construction Contracting Bids. The School Board shall procure construction contracting services by means prescribed in Sections 255.20 and 1013.45, Florida Statutes, Chapter 6A-2.0010, Florida Administrative Code, State Requirements for Educational Facilities (SREF) or as amended. For construction projects where the construction cost is estimated to be \$100,000 or more, construction services shall be advertised and procured by means of competitive sealed bids pursuant to Section 4.2(2), SREF, with recommendations for award and agreement presented to the School Board for approval. Projects where the construction cost is estimated to be less than \$100,000 shall be procured either by the above process or by receiving multiple competitive quotations, with the award and agreement approved by the Superintendent or appropriate District Administrator. Projects where the electrical work cost is estimated to be less than \$75,000 shall be procured either by above or by receiving multiple competitive quotations, with the award and agreement approved by the Superintendent or appropriate District Administrator. Each Construction Contracting Bid shall be accompanied by a bid bond, a certified check, or a cashier's check in an amount equal to five percent (5%) of the total amount of the bid. Failure to include such bond shall automatically disqualify the bid from further consideration.

**VII. COMPETITIVE SOLICITATIONS**

**A. Invitation to Bid (ITB) or Sealed Bid**

1. The Invitation to Bid shall be utilized for the purchase of commodities and/or services that can be fully defined and District staff is capable of specifically defining the scope of work for which a contractual service is required or when District staff is capable of

- establishing precise specifications defining the actual commodity or group of commodities required. Also referred to as a solicitation for competitive sealed bids.
2. Award shall be made to the lowest responsive, responsible bidder(s) as defined in the solicitation document.
  3. The Purchasing and Distribution Services Department, with the cooperation of the requesting school/department, shall develop the Invitation to Bid document. It is vital that the requesting school/department communicate their requirements to Purchasing by providing clear, detailed and open specifications that promote maximum and fair competition and result in obtaining best value and ensuring good stewardship of taxpayer funds. The bid shall contain all applicable terms and conditions prescribed by Federal, State, and School Board rules and regulations. A comprehensive solicitation template and detailed checklist outlining each step have been developed for internal use. Listed below in Sections 4-6 is a brief description of the solicitation process.
  4. The Invitation to Bid (ITB) is posted to VendorLink ([www.myvendorlink.com](http://www.myvendorlink.com)), the School District's online bid notification systems. A notice is sent to all firms who have registered to receive notification for this particular commodity or service. In addition, a supplemental list of firms that are not registered can be added to the notification system in [www.myvendorlink.com](http://www.myvendorlink.com). The firms download the ITB document, complete the required paperwork and either mail or deliver their bid response to the Purchasing and Distribution Services Department. All bids are due at a specific date and time. For commodities and services bids, the Proposers' names shall be read aloud at a public opening. For construction bids, the Proposers' names and total bid cost shall be read aloud at a public opening. The Purchasing and Distribution Services Department, often with the aid of the requesting school/department, will evaluate the bids in an effort to determine the lowest, responsive, responsible bidder(s) that meet all specifications, terms and conditions. In the event of tie bids, when identical low bids are received from an out-of-District vendor and a local vendor, the local vendor shall be recommended for award. The term "local vendor" means a vendor who has an established business presence in the District indicated by the following: Has a physical business location within the District for at least six (6) months immediately prior to issuance of the competitive solicitation, provides customer access at the business location, holds any required business license through a jurisdiction in the District, employs one (1) full-time or two (2) part-time employees in the District, or if the business has no employees, is at least fifty percent (50%) owned by one (1) or more persons whose primary residence(s) is located within the District. When two (2) or more local vendors present tie low bids on the same items, the company receiving the larger dollar award of the total bid shall be recommended for tie items. In the event two (2) or more local vendors present exact tie low bids and the dollar award is not a criterion, the successful bidder shall be selected by applying the following criteria in order: (a) drug-free workplace program in accordance with Florida law, (b) minority business enterprise (MBE) certified by the State of Florida Office of Supplier Diversity, (c) veteran business enterprise, certified by the State of Florida Department of Management Services, (d) by lot or public drawing.
  5. A notice of intended decision and tab sheet showing award recommendation will be posted to VendorLink. The purpose of this posting is to give public notice of the School District's intended decision and to allow any adversely affected firm an opportunity to file a protest within 72 hours of the posting. An agenda item will be submitted to the School Board by the Purchasing and Distribution Services Department to recommend award of the Invitation to Bid (ITB) after the expiration of the protest period. The ITB process takes approximately six (6) to eight (8) weeks.

**B. Request for Proposal (RFP)**

1. The Request for Proposal shall be utilized for the purchase of commodities and/or services that cannot be fully defined, when it is not practicable for District staff to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required and when the District staff is requesting that a responsible vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. Reasons to issue an RFP may



- be that various solutions are desired, and/or cost is not the major factor in the award. Also referred to as a solicitation for competitive sealed proposals.
2. Award shall be made to one or more proposers in accordance with the selection criteria published in the solicitation document.
  3. In an RFP, scope of work, requirements and evaluation criteria are listed along with any other requirements. These components are evaluated by an evaluation committee according to the evaluation system enumerated in the proposal. The Purchasing and Distribution Services Department, with the cooperation of the requisitioning school/department, shall develop the specifications and evaluation criteria to be used in the RFP; this package shall contain all applicable terms and conditions prescribed by the Federal, State, and School Board rules and regulations. A comprehensive solicitation template and detailed checklist outlining each step have been developed for internal use. Listed below in Sections 4-7 is a brief description of the solicitation process.
  4. The Request for Proposal (RFP) document is posted to VendorLink ([www.myvendorlink.com](http://www.myvendorlink.com)), the School District's online bid notification systems. A notice is sent to all firms who have registered to receive notification for this particular commodity or service. In addition, a supplemental list of firms that are not registered can be added to the notification system in [www.myvendorlink.com](http://www.myvendorlink.com). The firms download the RFP document, complete the required paperwork and either mail or deliver their RFP response to the Purchasing and Distribution Services Department. All RFP responses are due at a specific date and time, and the vendor's names shall be read aloud at a public opening.
  5. After the RFP responses are received by the Purchasing and Distribution Services Department, the responses are then distributed to the evaluation committee members for independent review and scoring. Each evaluation committee may at the discretion of the Board include a School Board member (non-voting). Each evaluation committee will consist of a Business Advisory Board member, and a cross-functional team of School District employees that are appointed by the Purchasing and Distribution Services Department in collaboration with the requesting school or department. In specific cases, when community input is needed, non-School District employees may be appointed to the evaluation committee. The Purchasing and Distribution Services Department staff facilitates evaluation committee meetings, instructs evaluation committee members on their responsibilities and ensures that the evaluation process is conducted in a fair, open and equitable manner. All evaluation committee meetings are public meetings and notices of meetings are posted in advance of the meeting(s) on the District's website.
  6. The evaluation committee evaluates the proposals in accordance with the evaluation system enumerated in the RFP. The firms are ranked and the short-listed firms may be invited to give oral presentations to or informal interviews with the evaluation committee. After the presentations/interviews, the evaluation committee evaluates the firms in accordance with the evaluation system or ranking process enumerated in the RFP. The evaluation committee reaches consensus upon the choice of the top-ranked firm(s).
  7. After the top-ranked firm(s) have been determined, a notice of intended decision with the evaluation committee's recommendation will be posted to VendorLink. The purpose of this posting is to give public notice of the School District's intended decision and to allow any adversely affected firm an opportunity to file a protest within 72 hours of the posting. After the expiration of the protest period, an agenda item will be submitted to the School Board by the Purchasing and Distribution Services Department to recommend award of the RFP and request permission to negotiate with the top ranked firm(s). After School Board approval of the request to negotiate, where applicable, a negotiation team appointed by the Director of Purchasing and Distribution Services completes the negotiations and finalizes the associated contract(s). An agenda item will be submitted to the School Board by the Purchasing and Distribution Services Department requesting approval of the associated contract(s). The RFP process takes approximately nine (9) to twelve (12) weeks.

**C. Invitation to Negotiate (ITN)**

1. The Invitation to Negotiate shall be utilized to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services. The invitation to negotiate is used when the District School Board determines that negotiations may be necessary for it to receive the best value.
2. This process may be utilized when specifications cannot be fully defined, there may be unknown areas such software or other technology, volatile market trend changes, etc. In an ITN, scope of work, requirements and evaluation criteria are listed along with any other desired functionality or requirements. These components are evaluated by an evaluation committee according to the ranking system enumerated in the proposal. The Purchasing and Distribution Services Department, with the cooperation of the requisitioning school/department, shall develop the specifications and evaluation criteria to be used in the ITN; this package shall contain all applicable terms and conditions prescribed by the Federal, State, and School Board rules and regulations. A comprehensive solicitation template and detailed checklist outlining each step have been developed for internal use. Listed below in Sections 3-7 is a brief description of the solicitation process.
3. The Invitation to Negotiate (ITN) is posted to VendorLink ([www.myvendorlink.com](http://www.myvendorlink.com)) the School District's online bid notification systems. A notice is sent to all firms who have registered to receive notification for this particular commodity or service. In addition, a supplemental list of firms that are not registered can be added to the notification system in [www.myvendorlink.com](http://www.myvendorlink.com). The firms download the ITN document, complete the required paperwork and either mail or deliver their ITN response to the Purchasing and Distribution Services Department. All ITN responses are due at a specific date and time, and the vendor's names shall be read aloud at a public opening.
4. After the ITN responses are received, the responses are then distributed to the evaluation committee members for independent evaluations. Each evaluation committee is comprised of a cross-functional team of School District employees that are appointed by the Purchasing and Distribution Services Department in collaboration with the originating school/department. In specific cases, when community input is needed, non-School District employees are appointed to the evaluation committee. The Purchasing and Distribution Services Department staff facilitates the evaluation committee meetings, instructs evaluation committee members on their responsibilities and ensures that the evaluation process is conducted in a fair and equitable manner. All evaluation committee meetings are considered to be public meetings and are posted to the District's website.
5. The evaluation committee evaluates the proposals in accordance with the ranking system enumerated in the ITN. The firms are ranked and the short-listed firms are invited to give oral presentations to or formal interviews with the evaluation committee. A notice of intended decision will be posted to VendorLink. The purpose of this posting is to give public notice of the School District's intended decision and to allow any adversely affected firm an opportunity to file a protest within 72 hours of the posting. After the presentations/interviews, the evaluation committee evaluates the firms in accordance with the ranking system enumerated in the ITN. The firms are ranked and the evaluation committee reaches consensus upon the choice of the top-ranked firm(s).
6. The Purchasing and Distribution Services Department will post a notice of intended decision of the finalist(s) ranking. The purpose of this posting is to give public notice of the School District's intended decision and to allow any adversely affected firm an opportunity to file a protest within 72 hours. After the protest period, an agenda item will be submitted to the School Board by the Purchasing and Distribution Services Department to request permission to negotiate with the top ranked firm(s).
7. After School Board approval of the request to negotiate, where applicable, a negotiation team appointed by the Director of Purchasing and Distribution Services completes the negotiations and finalizes the associated contract(s). After the negotiation phase, a notice of intended decision to award the contract (s) will be posted to VendorLink. The purpose of this posting is to give public notice of the School District's intended decision and to allow any adversely affected firm an opportunity to

file a protest within 72 hours. After the protest period, an agenda item will be submitted to the School Board by the Purchasing and Distribution Services Department requesting approval of the associated contract(s). The ITN process takes approximately nine (9) to twelve (12) weeks.

**D. Request for Statement of Qualifications (SOQ) – Non-CCNA**

1. A Request for Statement of Qualifications (SOQ) shall be utilized for services that are required by the School District, and for which price is not the determining factor. The services provided are homogeneous and may be regulated but the effective delivery of the services can be significantly affected by the Proposer's qualifications and/or influence or position within the market or industry. Budgets may be fixed and the evaluation criteria reflect that it is not a matter of the cost of the award as to the quality and the level of services that the budget will purchase. Award shall be made to one or more respondents in accordance with the selection criteria published in the solicitation document.
2. In an SOQ, the scope of services, requirements and evaluation criteria are listed along with any other requirements. These components are evaluated by an evaluation committee according to the ranking system enumerated in the SOQ. The Purchasing and Distribution Services Department, with the cooperation of the requisitioning school/department, shall develop the specifications and evaluation criteria to be used in the SOQ; this package shall contain all applicable terms and conditions prescribed by the Federal, State, and School Board rules and regulations. A comprehensive solicitation template and detailed checklist outlining each step have been developed for internal use. Listed below in Sections 3-6 is a brief description of the solicitation process.
3. The Request for Statement of Qualifications (SOQ) document is posted to VendorLink ([www.myvendorlink.com](http://www.myvendorlink.com)), the School District's online bid notification system. A notice is sent to all firms who have registered to receive notification for this particular commodity or service. In addition, a supplemental list of firms that are not registered can be added to the notification system in [www.myvendorlink.com](http://www.myvendorlink.com). The firms download the SOQ document, complete the required paperwork and either mail or deliver their SOQ response to the Purchasing and Distribution Services Department. All SOQ responses are due at a specific date and time, and the Proposer's names shall be read aloud at a public opening.
4. After the SOQ responses are received by the Purchasing and Distribution Services Department, the responses are then distributed to the evaluation committee members for independent review and scoring.
5. The evaluation committee reviews the proposals in accordance with the ranking system enumerated in the SOQ. The firms are ranked and the short-listed firms are invited to give oral presentations to or informal interviews with the evaluation committee. After the presentations / interviews, the evaluation committee evaluates the firms in accordance with the ranking system enumerated in the SOQ. The evaluation committee will reach consensus upon the choice of the top-ranked firm(s).
6. After the top-ranked firm(s) are determined, a notice of intended decision with the evaluation committee's recommendation will be posted to VendorLink. The purpose of this posting is to give public notice of the School District's intended decision and to allow any adversely affected firm an opportunity to file a protest within 72 hours. After the protest period, an agenda item will be submitted to the School Board by the Purchasing and Distribution Services Department to recommend award of the SOQ and request permission to negotiate with the top ranked firm(s). After School Board approval of the request to negotiate, where applicable, a negotiation team appointed by the Director of Purchasing and Distribution Services completes the negotiations and finalizes the associated contract(s). An agenda item will be submitted to the School Board by the Purchasing and Distribution Services Department requesting approval of the associated contract(s). The SOQ process takes approximately nine (9) to twelve (12) weeks.

**E. Request for Statement of Qualifications (RFQ) – Competitive Consultants Negotiations Act (CCNA)**

1. Professional services are generally procured for the District through processes which focus on the qualifications and abilities of the provider. In the area of construction-related professional services, the state legislature has imposed specific requirements for qualifying, selecting and negotiating with providers. The Consultants' Competitive Negotiation Act ("CCNA") (Section 287.055, Florida Statutes) sets forth requirements for procuring and contracting for architectural, professional engineering, landscape architectural, registered surveying, and mapping services. The CCNA requires school districts to follow a qualifications-based evaluation process for any project in which the basic construction cost exceeds the amount provided in Florida Statute 287.017 Category Five (\$325,000), or, for a planning or study activity, the fee for professional services exceeds the amount provided in Florida Statute 287.017 Category Two (\$35,000). Price cannot be considered during the evaluation process for these services. The following basic procedures shall be followed to procure professional services in those situations to which the CCNA applies. This process shall be referred to as the "Request for Qualifications" ("RFQ") process. As outlined in Section 1 above, the professional services to which CCNA applies are those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice. For the purpose of this section of the manual, the term "Consultant" means an independent contractor who provides professional services that are subject to CCNA.
2. If the project's construction cost is less than \$2,000,000, or if a study activity is being undertaken and the fee for professional services is less than \$35,000, the using department shall check the on-line list of continuing contracts first to determine if one of the contracted Consultants can provide the required Scope of Services. If a continuing contract exists, the using department shall request a written proposal from the awarded Consultant in the format defined by the continuing contract. If the using department is satisfied with the price and Scope of Work, the using department shall prepare a purchase order request and submit it to the Executive Director of Operations for approval if it is less than \$50,000. If the written proposal is \$50,000 or greater and less than \$100,000 it must be approved by the Superintendent. If the written proposal is \$100,000 or greater, the proposal must be submitted to the School Board for approval. If the using department is not satisfied with the Consultant's proposed price and Scope of Work, the using department should contact the Consultant and request a revised written proposal. If an agreement cannot be reached, negotiations shall cease with this Consultant and another continuing contract Consultant can be contacted. After the using department requests a written scope of work from the second Consultant, the first Consultant cannot be contacted again for the required Scope of Services. CCNA mandates that consultants providing services under continuing contracts shall not be required to bid against one another.
3. After the appropriate approvals, the using department shall enter a purchase order request into the PeopleSoft financial system for approval and encumbrance of funds. The requisition must reference the RFQ Solicitation Number, applicable contract number and School Board approval date.
4. If a continuing contract cannot be utilized, the Purchasing and Distribution Services Department, with the assistance of the using department, shall develop the scope of services, requirements and evaluation criteria for the Request for Statements of Qualifications (RFQ). Pricing is not a factor in the evaluation and award recommendation per Florida Statute 287.055. These components are reviewed and scored by an evaluation committee according to the ranking system enumerated in the RFQ. This package shall contain all applicable terms and conditions prescribed by Federal, State, and School Board rules and regulations. A comprehensive solicitation template and detailed checklist outlining each step have been developed for internal use. Listed below in Sections 6-12 is a brief description of the solicitation process.

5. The Request for Statement of Qualifications (RFQ) document is posted to VendorLink ([www.myvendorlink.com](http://www.myvendorlink.com)), the School District's online bid notification system. A notice is sent to all firms who have registered to receive notification about this particular commodity or service. In addition, a supplemental list of firms that are not registered can be added to the notification system in [www.myvendorlink.com](http://www.myvendorlink.com). The firms download the RFQ document, complete the required paperwork and either mail or deliver their RFQ response to the Purchasing and Distribution Services Department. All RFQ responses are due at a specific date and time, and the Proposer's names shall be read aloud at a public opening.
6. After the RFQ responses are received by the Purchasing and Distribution Services Department, the responses are then distributed to the evaluation committee members for independent review and scoring.
7. The evaluation committee reviews the proposals in accordance with the ranking system enumerated in the RFQ. The firms are ranked and a minimum of three (3) of the short-listed firms must be invited to give oral presentations to or informal interviews with the evaluation committee. After the presentations / interviews, the evaluation committee evaluates the firms in accordance with the ranking system enumerated in the RFQ. The evaluation committee will reach consensus upon the choice of the top-ranked firm(s).
8. After the top-ranked firm(s) are determined, a notice of intended decision with the evaluation committee's recommendation will be posted to VendorLink. The purpose of this posting is to give public notice of the School Districts intended decision and to allow any adversely affected firm an opportunity to file a protest within 72 hours. After the protest period, an agenda item will be submitted to the School Board by the Purchasing and Distribution Services Department to recommend award of the RFQ and request permission to negotiate with the top ranked firm(s).
9. After School Board approval of the request to negotiate, where applicable, the User Department shall take a lead role in the negotiation process with the highest ranked firm for the purpose of executing a Contract. The negotiation team shall negotiate a fair, competitive, and reasonable contract. Any changes to the standard contract language shall be submitted to the School Board's assigned Legal Counsel, who will ensure that the changes are in compliance with applicable law before the final contract is presented to the School Board for approval. The quality control and accuracy of the contract document and verification of all applicable exhibits, financial and insurance requirements shall be the responsibility of the Executive Director of Operations.
10. Should the negotiation team be unable to negotiate a satisfactory contract with the highest ranked firm(s), the negotiation team shall formally terminate negotiations and then request approval from the School Board to undertake negotiations with the next highest ranked firm(s). Should the negotiation team be unable to negotiate a satisfactory Contract with the next most qualified firm(s), the negotiation team shall formally terminate negotiations and then request approval from the School Board to undertake negotiations with the next highest ranked firm(s).
11. An agenda item will be submitted to the School Board by the Purchasing and Distribution Services Department requesting approval of the associated contract(s). The RFQ process takes approximately nine (9) to twelve (12) weeks.

**F. Design-Build Services (DB)**

1. Summary: A design-build project combines the design and construction of a building or structure in a single Contract performed by one firm. Design-Build procedures are governed by Florida Statute 287.055, as amended, and set forth specific criteria for obtaining design-build services. This method requires a design criteria package be prepared, sealed by a design criteria professional employed by or retained by the School District and included with the RFQ or RFP, as applicable.
2. The design criteria professional who prepared the design criteria package shall be included in the evaluation of the proposals, approval of detail work and drawings for the project and compliance of project construction with the package.
3. The design criteria professional who prepares the design criteria package is not eligible to submit a proposal or render any other services under the design build procedure.

4. Design-build contracts shall be awarded in accordance with either a qualifications-based selection process by following CCNA (RFQ) procedures or a competitive proposal (RFP) selection process as described in this section. The Executive Director of Operations shall recommend to the School Board the process to be utilized for each proposed construction project.
  - a. Purpose. In order to comply fully with the requirements of F.S. § 287.055, Laws of Florida, the following procedures shall be followed in selecting firms to provide design-build services and in negotiating design-build contracts.
  - b. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Design-build contract means a single contract with a design-build firm for the design and construction of a School District construction project. A design-build firm means a legal entity which:
    - (1) Is certified under F.S. § 489.119 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as a qualifying agent; or
    - (2) Is certified under s. 471.023 to practice or to offer to practice engineering; certified under F.S. § 481.219 to practice or to offer to practice architecture; certified under F.S. § 481.319 to practice or to offer to practice landscape architecture. Definitions in Fla. Stat. 287.055 are incorporated by reference. The definitions of other terms defined in F.S. § 287.055 are hereby incorporated by reference.
  - c. Design criteria package. For each design-build construction project ("project"), a design criteria professional as defined in F.S. § 287.055(2)(k), employed by or retained by the School District, shall prepare and seal a design criteria package ("package") specifying concise, performance-based criteria for the project, including, but not limited to:
    - (1) The legal description of the site.
    - (2) Survey information concerning the site.
    - (3) Interior space requirements.
    - (4) Material quality standards.
    - (5) Schematic layouts and conceptual design criteria.
    - (6) Cost or budget estimates.
    - (7) Design and construction schedules.
    - (8) Site development requirements.
    - (9) Provision for utilities.
    - (10) Provisions for storm water retention and disposal.
    - (11) Parking requirements.
    - (12) Statement of required compliance with state requirements as applicable.
  - d. Qualifications-Based Selection Process. The Purchasing Department shall prepare a Request for Qualifications (RFQ) package for the proposed construction project. A comprehensive solicitation template and detailed checklist outlining each step have been developed for internal use. Listed below in this section is a brief description of the solicitation process. The process shall follow all public notification requirements and procedures. The RFQ shall be advertised in accordance with the procedures outlined in this manual. The RFQ package shall be in compliance with all applicable Florida Statutes and State Board Rules and shall include a design criteria package and evaluation criteria for factors such as the ability of professional personnel; past performance; ability to meet time and budget requirements; location of firm offices; recent, current and projected workloads of the firms; and other factors relevant to the project. The Evaluation Committee shall review the submittals in accordance with the procedures of this manual, meet and develop a short list for oral presentations or informal interviews. The Evaluation Committee shall then conduct oral presentations or informal interviews with the highest scoring firms (minimum of three) and will establish ratings for each firm in accordance with the scoring criteria established within the RFQ. The Evaluation Committee shall recommend the final ranking to the School Board. After the School Board has ratified the final rankings, the negotiation team

shall engage the highest ranked firm(s) in negotiations for purposes of a final Contract approved by the School Board. The negotiation team shall follow the negotiation process as outlined in this manual, and subsequent to competitive negotiations the parties shall establish a guaranteed maximum price and guaranteed completion date.

- e. **Competitive Proposal Selection Process.** The Purchasing Department shall prepare a Request for Proposal (RFP) package for the proposed construction project. A comprehensive solicitation template and detailed checklist outlining each step have been developed for internal use. Listed below is a brief description of the solicitation process. The process shall follow all public notification requirements and procedures. The RFP shall be advertised in accordance with the procedures outlined in this manual. The RFP shall include a design criteria package and numerical evaluation factors such as the ability of professional personnel; past performance; ability to meet time and budget requirements; location of firm offices; recent, current and projected work-loads of the firms; and other factors relevant to the project. The Evaluation Committee shall review the submittals in accordance with the procedures of this manual, meet and develop a short list for oral presentations or informal interviews. The Evaluation Committee shall then conduct oral presentations or informal interviews with the highest scoring firms (minimum of three) and will establish ratings for each firm in accordance with the scoring criteria established within the RFP. Each Short-listed firm shall be required to submit and publicly present their responses to the design criteria package. The scoring criteria for the presentations/interviews shall include numerical evaluation factors for price, technical and design aspects of the responses. The Evaluation Committee shall recommend the final ranking to the School Board. After the School Board has ratified the final rankings, the School Board shall authorize the negotiation team to engage the highest ranked firm(s) in negotiations for purposes of a final Contract approved by the School Board. The negotiation team shall follow the process as outlined in this manual.

**G. Public Advertisements and Notices**

All formal solicitations and addenda must be publicly advertised in advance of the specified due date. Advertising requirements are dependent upon the type and value of the proposed Contract. An extended advertising period is suggested if a wide selection of potential Respondents is required.

**Public Advertising Requirements for All Competitive Solicitations**

Type	Newspaper Legal Ad and/or VendorLink	Minimum*	Recommended
ITBs, RFPs, RFQs, ITNs (Non-Construction) <sup>1</sup>	2 Times	10 Calendar Days	21 - 30 Days
Construction Projects < \$300,000 and Electrical Projects <\$75,000 <sup>2 &amp; 3</sup>	3 Times	21 Calendar Days	30 Days
Construction Bids \$300,000 + and Electrical Projects \$75,000+ <sup>2 &amp; 3</sup>	3 Times	28 Calendar Days	30 Days
Addendum and Changing The Due Date <sup>1</sup>	VendorLink	7 Calendar Days	10 - 15 Days
Single/Sole Source Posting <sup>4</sup>	1 Time	7 Business Days	7 Business Days
Pre-Bid Meeting <sup>2</sup>	VendorLink	5 Calendar Days	7 Days

\*Minimum - number of days from date of electronic posting of solicitation until due date and/or Pre-Bid Meeting.

Key to Public Advertisement Requirements:

- 1 Florida Statute 287.042(3)(b)1.
- 2 Florida Statute 255.0525(2).
- 3 State Requirements for Educational Facilities, Section 4.2.
- 4 Florida Administrative Code 6A-1.012(12)(d).

**H. Additional Competitive Solicitation Process and Document Requirements**

1. All evaluation committee members must attend training and sign an instruction form agreeing to their roles and responsibilities, which include verifying in writing that there is no conflict of interest in their participation in the evaluation process. The Purchasing Department has developed standardized forms for evaluation committee member training. In addition, evaluation committee members are instructed to evaluate the proposals independently prior to the first evaluation committee meeting, and shall not communicate with each other unless they are in an evaluation committee meeting scheduled by the Purchasing and Distribution Services Department. During the evaluation process, there is a cone of silence in effect, per School Board Policy 6324: "A cone of silence is hereby established for all competitive selection processes including Invitations for Bids (IFB), Request for Proposals (RFP), Request for Statement of Qualifications (RFSQ), and Invitations to Negotiate (ITN) for the provision of goods and services. The cone of silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the recommendation of contract award. This cone of silence shall be imposed on these procurements after advertisement of same."
2. The performance and payment bond required by 1013.47, F.S., may be waived prior to the awarding of contracts by the School Board for construction, renovation, remodeling, or contracts of two hundred thousand dollars (\$200,000) or less. The waiver shall be determined by the Superintendent or Superintendent's Designee. Companies furnishing performance and payment bonds on construction contracts shall be licensed to do business within the State of Florida and hold an "A-" or better rating in A.M. Best's Key Rating Guide, Property and Casualty Insurers.

**I. Protests**

All Protests must be made in accordance with the requirements of the terms and conditions of the solicitation, School Board Policy 6326, and the Administrative Rules of the Florida Department of Education, and Chapter 120, Florida Statutes.

**VIII. EXCEPTIONS TO COMPETITION / COMPETITIVE SOLICITATIONS**

Additional approval may be required for exemptions to competition of \$50,000 or greater. Board approval may be required for exemptions to competition of \$100,000 or greater, if not already obtained.

**A. Bids Waived Purchases**

6A-1.012 (11) (a) waives the requirement for requesting competitive solicitations for the purchase by District School Boards of professional services which shall include, without limitation, artistic services; academic program reviews; lectures by individuals; auditing services not subject to Section 218.391, F.S.; legal services, including attorney, paralegal, expert witness, court reporting, appraisal or mediator services; and health services involving examination, diagnosis, treatment, prevention, medical consultation or administration; and 6A-1.012 (11) (b) waives the requirement for requesting competitive solicitations for the purchase by District School Boards of educational services and any type of copyrighted materials including, without limitation, educational tests, textbooks, printed instructional materials, computer software, films, filmstrips, videotapes, DVDs, disc or tape recordings, digital recordings, or similar audio-visual materials, and for library and reference books, and printed library cards where such materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent within the state, a governmental agency or a recognized educational institution.



**B. Confirmation Purchases**

Except as authorized herein, the issuance of a Purchase Order is required for all purchases. School Board Policy and State Board of Education Rules prohibit confirmation transactions (i.e., purchase orders issued after the fact) that have been created without encumbering funds and the financial obligation in advance and receiving the Purchasing and Distribution Services Department prior approval to issue a purchase order before materials or services have been delivered. All purchases must be approved in advance by first entering and posting a POR into the School District's financial system, and having it approved by the appropriate parties including the Purchasing and Distribution Services Department.

**C. Cooperative Bids**

A group of governmental agencies may be combined to maximize purchasing power or reduce redundancy. A joint bid is developed, reviewed and approved by the agencies participating in the bid. The names of the agencies are listed in the bid and the vendors must agree to supply all agencies listed without exception. One agency is selected as the lead agency to solicit and administer the bid solicitation, evaluation and award process. Participating agencies adopt the recommendation of the lead agency and commit to purchase from the contract after obtaining their agency's approval.

**D. Direct Negotiation**

State Board Rules list types of purchases which may be made through the Direct Negotiation process in lieu of seeking competitive solicitations. According to these rules, purchases such as Information Technology, Insurance of all types, Entering into Risk Management Programs and Contracting with Third Party Administrators may be exempt from the competitive solicitation process. Superintendent or School Board approval shall be obtained depending on the dollar value after negotiations are completed and the contract is finalized.

**E. Emergency Purchases**

State Board of Education Rule 6A-1.012 (12) (e) and School Board Policy 6320 provides guidelines for emergency purchase situations. The Board may dispense with requirements for competitive solicitation for the emergency purchase of commodities or contractual services when the Superintendent determines in writing that an immediate danger to the public health, safety, or welfare of students, staff, or the public, jeopardizes a project, or other substantial loss to the District requires emergency action. After the Superintendent makes such a written determination, the Board may proceed with the procurement of commodities or contractual services necessitated by the immediate danger, without requesting competitive solicitations. However, such an emergency purchase shall be made by obtaining pricing information from at least two (2) prospective vendors, which must be retained in the contract file, unless the Superintendent determines in writing that the time required to obtain pricing information will increase the immediate danger to the public health, safety, or welfare or other substantial loss to the District. All emergency bids shall be tabulated and presented to the superintendent who shall submit the matter to the Board for action at the next regularly scheduled meeting. The Board minutes shall show the need to initiate emergency bid procedures and shall justify that regular bid procedures would cause a delay and be contrary to the public interest.

**F. Grant Funded / State / Federal Contracts**

State Board of Education Rule 6A-1.012 (12) (f) allows a contract for commodities or contractual services to be awarded without competitive solicitation if State or Federal law, a grant or a state or Federal agency contract prescribes with whom the District School Board must contract or if the rate of payment is established during the appropriations process.

**G. Piggybacking**

State Board of Education Rule 6A-1.012(6) affords school districts the right to make purchases at or below the specified prices from contracts approved by other governmental

agencies throughout Florida, School Districts, community colleges, federal agencies, public or governmental agencies of any state, or from state university system cooperative bid agreements without seeking our own bids provided that parties abide by all the terms and conditions established in their original bid documents or contracts and the vendors agree to extend the bid or contract for our use. Contact the Purchasing & Distribution Services Department to confirm or determine if a proposed contract / solicitation is appropriate and available for a district purchase.

**H. Pooled Purchases**

See State Board of Education Rule 6A-1.013

**I. Pride / Respect**

See FS 287.042 (2) (a) & FL 413.036

**J. Regulated Utilities Or Government Franchised Services**

State Board of Education Rules state that a contract for regulated utilities or government franchised services may be awarded without competitive solicitations.

**K. Single / Sole Source Purchases**

State Board of Education Rules allows commodities or contractual services available only from a single /sole source to be exempted from the competitive solicitation requirements. When a district school board believes that commodities or contractual services are available only from a single source, the district school board shall electronically or otherwise publicly post a description of the commodities or contractual services sought for a period of at least 7 business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. If it is determined in writing by the district school board, after reviewing any information received from prospective vendors, that the commodities or contractual services are available only from a single source, the district school board shall provide notice of its intended decision to enter a single source contract in the manner specified in Section 120.57(3), F.S., and may negotiate on the best terms and conditions with the single source vendor.

**L. State Contracts / State Purchasing Agreements**

State Board of Education Rules afford School Districts the right to purchase from State Contracts / Agreements issued by the Florida Department of Management Services, Purchasing Division, (DMS) without seeking our own competitive bids. State Contracts are available on their website. School Board approval is required for the original request to purchase from State Contracts, when the contract value is \$100,000 or greater. Purchase orders must reference the State Contract number in order to obtain contract pricing from the vendors. Since State contracts are automatically renewed / extended at the state level and posted on their website, School District Board approval is not required for the renewal of a state contract.

**IX. CONTRACTS / AGREEMENTS**

**A. Contract / Agreement Approval Authority**

The District School Board shall constitute the contracting agent for the District School System. The procedure for the review, approval, and execution of agreements or contracts between the School Board and vendors and/or service providers follow (Ref: FS1001.41 / SBR 7.70.II). The Purchasing and Distribution Services Department has Standard Services Agreements with terms and conditions approved by the Executive Director of Legal Services and these agreements should be utilized in order to protect the interests of the School District.

1. All Contracts shall be reviewed and approved by the Director of Purchasing and Distribution Services Department and/or the Executive Director of Legal Services to

insure legality, compliance with Board policy, and to insure the School Board interests are protected before the authorized signatory may execute the contract.

2. Board Authorized Contracts. All Contracts having a value of \$100,000 or more shall be authorized by the School Board at a regular or special meeting and signed by the Board Chairman and Superintendent.
  3. Delegated Authority. All approved Contracts having a value of less than \$100,000 may be executed by the Superintendent or appropriate District Administrator based on the value of the goods or services of the specific contract.
    - a. All approved Contracts having a value of \$50,000 or more, but less than \$100,000, shall be signed by the Superintendent.
    - b. All approved Contracts having a value of \$25,000 or more, but less than \$50,000, shall be signed by the Superintendent, a Deputy Superintendent or an Executive Director.
    - c. All approved Contracts having a value of less than \$25,000 may be signed by the Superintendent, a Deputy Superintendent, an Executive Director, Director or Principal.
    - d. The Superintendent or designee is authorized to approve contract amendments or change orders for the purchase of commodities and services up to the amount of ten (10) percent or \$25,000, whichever is less, of the original contract amount that was previously approved by the School Board.
    - e. The Superintendent is authorized to approve contract amendments or change orders less than \$100,000 for the purchase of professional, construction management or design-build services as defined by the Consultant's Competitive Negotiations Act (Florida Statute 287.055). Upon approval of change orders less than \$100,000, such change orders shall be submitted to the School Board by the Facilities Planning Department as an information item and recorded in the School Board minutes. Contract amendments and change orders \$100,000 and greater shall be submitted to the School Board for approval.
- B.** The School Board will not recognize a Contract or agreement as binding unless executed by an authorized employee in accordance with this policy. Vendors that enter into a contract are required to determine if the person purporting to execute a contract on behalf of the School Board or the School Board on behalf of a school or department is authorized to do so. Employees who enter into agreements without authority may be personally liable for such agreements, whether oral or written. Employees who enter into unauthorized agreements may be subject to disciplinary action.
- C. District Standard Services Agreement.** A District standard services agreement is required for the purchase of services \$10,000 and greater. For purchases less than \$10,000, your purchase order will be the agreement. Both the agreement and the POR should include as a minimum:
1. Name and Address of the company.
  2. Name of person providing services if applicable.
  3. Description of services to be provided and/or topic of the professional development.
  4. Where and when (date & time) services will be performed.
  5. Rate of pay: flat rate per day or per presentation, inclusive of all travel cost, and not to exceed compensation amount.
  6. Number of participants (Teachers, administrators, clerical, etc.) per session.

## **X. PURCHASING CARD PROGRAM (SBR 7.70.VI)**

The Board recognizes the value of a purchasing card as an efficient method of payment and record keeping for certain expenses. The Board, therefore, has authorized the use of School District purchasing cards. The authorization, handling, and use of purchasing cards has been established to provide a convenient and efficient means to purchase goods and services from vendors. Purchasing cards, however, shall not be used in order to circumvent the general purchasing procedures established by Board policy. The Purchasing and Distribution Services Department and the Finance Department will monitor the performance of the program. Refer to the Purchasing & Distribution Service's intranet site for the Purchasing Card Procedures Manual and forms <http://insider.scps.k12.fl.us/purchasing/purchasing-card-program/>

## **XI. INSURANCE AND FINGERPRINTING REQUIREMENTS**

**A. Insurance Requirements.** The Chief Financial Officer shall be responsible for the provision of standard insurance requirements language that is to be included in all competitive solicitations and contracts. The Certificate of Insurance shall be issued with the "School Board of Seminole County, Florida" as an additional insured and must contain a provision for notification to the Board thirty (30) days in advance of any material change in coverage or cancellation. The standard insurance language is posted on the Purchasing and Distribution Services website. Any changes must be approved by the Chief Financial Officer.

**B. Fingerprinting /Background Screening Requirements.** All vendors must obtain a Florida Statewide Contractor Badge and Seminole County Credentials for access to School District property. Refer to the following document located on the Purchasing and Distribution Services Department website for Contractor/vendor requirements for background screenings: "Steps to Become A Vendor."

## **XII. CONTRACT ADMINISTRATION**

Contract administration involves those activities that begin after the award of the contract. Its purpose is to assure that the contractor's and agency's performance is in accordance with the terms and conditions of the contract. It encompasses all dealings between the School District and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. Contract administration is the primary part of the procurement process that ensures the School District receives what it paid for.

### **A. Contract Types**

In relation to contract administration, there are several common types of contracts: Purchasing Card Transactions, Purchase Orders, Blanket Purchase Orders, Consultant Agreements, Service Agreements, Memorandums of Understanding, Awarded Competitive Solicitations, Contracts for Services, Leases, Software, Construction, and Professional Services.

### **B. Contract Administrator**

1. Contract administration is part of the overall procurement process, however, this responsibility has been decentralized to the end user schools / departments.
2. The Contract Administrator should generally be the District employee who is the end user of the contract, the staff member who has a vested interest in the outcome of the procurement, and who will be responsible for ensuring the proper adherence to all contract specifications by the contractor. When necessary, the Contract Administrator by title or name will be specified within the contract. It is the responsibility of the assigned Contract Administrator to perform contract administration duties.
3. The nature and scope of contract administration will vary from contract to contract. It can range from the minimum acceptance of a delivery and payment to the contractor

to extensive involvement by program, audit, and procurement officials throughout the contract term. Factors influencing the degree of contract administration include the nature and complexity of the work, the type of contract, and the experience and commitment of the personnel involved. Depending upon the complexity of the contract, a contract administration team may be appointed that may include but not limited to: the Purchasing and Distribution Services Department, subject matter experts, project managers, consultants, engineers, and legal counsel.

**C. Post Award Activities**

Post award activities that occur between the School District and contractor may include some or all of the following activities: post award conference, monitoring and review of: (contractor performance, quality, schedules, conflicts, budget and payment, risk of failure, subcontracts, data, reports, and acceptance), and close-out activities.

**D. Delivery, Inspection, Acceptance and Rejection**

1. Delivery of Goods

- a. The Contract Administrator should have a clear understanding of the shipping terms and maintain a copy of the purchase order or award document. The administrator is responsible for ensuring the vendor complies with the shipping terms stated in the purchase order or contract.
- b. Unless otherwise specified contractually, the School District requests all goods be shipped F.O.B. Destination (title passes when goods are received on site at the location as designated by the contract), with all shipping charges included in the quoted prices. .
- c. Delivery instructions should be made clear in the purchase order or award documents specifying any conditions or issues impacting delivery such as restrictive loading areas or limited elevator access. If applicable, the contract shall specify manner in which the delivery is to be accepted, e.g. (tailgate only, at dockside only, deliver on pallets, make inside delivery by floor and room number, deliver and install and remove all debris, deliver at only certain specified hours, etc.).
- d. Delivery must be made by the date or period specified in the PO and/or contract or the contractor may be considered to be in default.

2. Inspection by the Contract Administrator

- a. Inspection ensures that the contract is fully performed by guaranteeing that the product or service is received in the correct quality, correct quantity and in a timely manner, and that the received product or service is received in good working condition and undamaged. Proper receiving and inspection techniques provide for the early the detection of defects and allow for corrective action to be taken.
- b. Inspection of received goods may include but not be limited to receiving personnel to look for shipping damage, count the quantities, and noting that the items have been received. In addition, some purchases of goods or services may include one or more of the following inspection techniques: after-delivery inspection, in-process inspection, final inspection, sampling inspection, technical testing, and first-article testing. If shipping damage is suspected, noting on the manifest provided by the shipping agent of any crushed corners, punctures or other visible signs of possible damage will set up a possible future claims against the shipping agent protecting both the district and the vendor against lost. A picture of the damage is worth a thousand words.
- c. In the event there is an issue identified by the inspection process, the Contract Administrator shall report within ten days after delivery to the contractor and prior to removal from the point of delivery any unacceptable issues. If latent defects are found, the contractor is responsible for replacing the defective goods within the delivery time originally stated in the solicitation and is liable for any resulting expenses incurred by the School District. For any latent defects that exceed the

originally stated delivery time, the Contract Administrator shall contact the Purchasing and Distribution Services Department.

3. Acceptance
  - a. The acceptance process is a critical part of contract administration. Acceptance entitles the contractor to payment and often limits the rights of the School District to seek remedies if defects are found at a later date. In order to seek remedy after a good or service has been accepted it would have to be determined to be a latent defect or fraud.
  - b. Notification of the acceptance should be completed in the School District's financial system by "approving" the invoice thus indicating that the good or service that is accepted. Timely and proper payment of invoices requires expedient review and acceptance of the delivery against the terms of the purchase order or contract.
4. Rejection
  - a. Rejection of goods or services is the responsibility of the Contract Administrator. Rejection should generally occur whenever the goods or services do not comply with contract requirements or visible damage at the time of delivery.
  - b. In the event of a partial or total rejection, and when warranted, the Contract Administrator shall immediately notify the contractor as to the reasons for rejection and to request prompt action to correct the problem within a reasonable timeframe. Depending on the contract, further discussions with and the provision of additional documentation may be required by the Purchasing and Distribution Services Department.

## **E. Invoices and Payments**

1. Invoices
  - a. Invoices must be date- and time- stamped upon receipt.
  - b. Invoices must be thoroughly reviewed by the Contract Administrator to ensure that what is billed is accurate based on services rendered/goods received and what was agreed upon in the contract/purchase order. Invoices should only be recommended for payment approval if the nature, type, and quantity of effort or materials being expended are in general accord with the progress of work under the contract. It is important to keep a record of time worked and materials used.
  - c. Copies of packing slips or other evidence of satisfactory receipt of goods and services should be copied and submitted to Accounts Payable as part of the voucher approval process.
  - d. The vendor must provide appropriate backup documentation with the invoice remitted for payment. For time and materials contracts, it is essential that billed costs be analyzed (and challenged when appropriate) prior to approval for payment. Invoices should specify the amount and type of labor that is contained in the contract with the associated rates and the material costs so that verification of contract terms and pricing can be accomplished. The material costs should be supported with documentation as required in the contract (i.e., price list or vendor's cost).
2. Payments
  - a. The District's standard terms of payment is Net 30 days, meaning, a check will be issued 30 days after receipt of the invoice and the associated products/services requested. The District is subject to Local Government Prompt Payment Act for prompt payments (F.S. 218.70).
  - b. In general, payments for supplies and services takes place upon the successful completion of some portion or all of the work required by the contract. Depending on the complexity and variety of the supplies and services, the contract may include one or more of the following types of payments: partial, progress, milestone, advance, withholding, and completion.
3. Advance Payments/Prepayment of Goods or Services
  - a. Because Florida Statutes require, with few exceptions, that goods be received and inspected prior to paying a vendor, the District generally disallows advance payments to vendors for prepayments of goods or services. Vendors are

expected to have adequate resources and working capital to provide requested goods or services prior to District payment. Further, prepayment can expose the District to financial and operational risks.

- b. The District may allow advance payments to vendors in the following circumstances:
  - 1) Advance payments are permitted for goods or services for which prepayment is the pervasive industry practice. For example, subscriptions, maintenance agreements, warranties, software license agreements, and other similar items that expire over time are typically paid for in advance.
  - 2) A formal request for exception may be submitted to the purchasing department for approval. The Advance Payment request must provide documented support that the following criteria are met:
    - a) There is no vendor available that will provide the commodities or services prior to payment.
    - b) The commodities or services are essential to the operation of the District.
    - c) In addition, the request must include the following:
      - i. Written quote from supplier,
      - ii. Description and calculation of savings, if any, obtained by making payment in advance,
      - iii. Description of the established industry business practices of the vendor requesting advance payment,
      - iv. Fund used on the payment and whether the purchase and advance payment(s) cross fiscal year(s), and
      - v. Whether a vendor is providing a commodity or services built to District specifications.
  - 3) Requests for advance payments less than \$25,000 require approval by the Director of Purchasing and Distribution Services. Requests for Advance Payments \$25,000 and greater require approval by the Chief Financial Officer.
  - 4) Purchase Orders that require a partial or full advance payment should be entered into PeopleSoft with line items for each pre-payment listed. All line items to be prepaid must be received in PeopleSoft by the department and the vendor must submit an invoice for the prepayment amount(s). In the event that the prepaid item is not received, then the department or school must follow-up with the vendor, Procurement Agent, and/or Accounts Payable to resolve the issue.

**F. Contract Modifications (Amendments and Change Orders)**

All contract modifications and change orders require the Purchasing and Distribution Services Department review and approval. Any request for change affecting price, quality, quantity, delivery, term, or cancellation requires additional discussion and documentation. In addition, Superintendent or School Board approval may be required.

**G. Contract Renewal and Extension**

1. **Renewal.** Contracts may contain a renewal clause describing the conditions under which it may be renewed for a stipulated period of time. However, no contract may be renewed and no additional consideration may be paid unless specifically provided for in the original contract. In addition, Superintendent or School Board approval may be required. Early communication with Purchasing and Distribution Services can assist in determining next steps.
2. **Extension.** The Purchasing and Distribution Services Department may extend the term of an existing contract for services to allow completion of any current work undertaken but not completed during the original term of the contract. Also, in exceptional or extenuating circumstances a contract may be extended by mutual consent in writing for a limited period of time, not to exceed six (6) months. In addition, Superintendent or School Board approval may be required.

**H. Closing / Cancellations of Purchase Orders and Contracts**

Each cost center is responsible for keeping all purchase orders for their cost center current. Each cost center is encouraged to review the open and pending purchase orders monthly to insure old or invalid purchase orders with residual values are closed and/or canceled. Requests to cancel district agreements / contracts will require additional discussion and documentation. The cost center department head or school principal should contact the appropriate Buyer to begin the process. In addition, Superintendent or School Board approval may be required.

**I. Contract Terminations**

1. **Termination for Convenience.** Termination for convenience is a contract clause which may be contained in the contract language that would allow for a contract to be terminated in accordance with contract provisions with no reflection on the vendor's performance. The effective termination date and the extent of termination must be specified in writing to the contractor in accordance with the terms and conditions within the contract. Termination for convenience will require additional discussion and documentation with the Purchasing and Distribution Services Department. In addition, Superintendent or School Board approval may be required.
2. **Termination for Default.** Termination for default is a contract clause which may be contained within the contract language that would allow for a contract to be terminated due to the failure of contractor to perform satisfactorily. The right to terminate for default is contingent upon two factors: (1) reasonable grounds for termination or (2) noncompliance with certain procedural notification requirements. Documentation is crucial in relation to this process. There are three types of notices that are normally associated with a termination for default clause: (1) cure notice, (2) show cause, and (3) notice of termination for default. Termination for default will require additional discussion and documentation to the Purchasing and Distribution Services Department. In addition, Superintendent or School Board approval may be required.

**J. Vendor Performance Complaints**

Complaints about and/or discrepancies in vendor performance should be reported to the Purchasing and Distribution Services Department as they occur. Vendors will be contacted and requested to respond within ten days. Failure to respond, or an unsatisfactory response, could result in the District's withholding payment on invoices, termination of the contract, or it could negatively impact the contractor's future business with the School District. Reports of Unsatisfactory Materials and/or Service are necessary in order for the Purchasing and Distribution Services Department to develop vendor history, evaluate vendor performance, and, if required, to take appropriate and timely action.

**K. Other Contract Administration Factors**

1. Record Keeping
  - a. Records shall be maintained by the Cost Center Contract Administrator for each contract that contains the following where applicable: the contract and any modifications, all contract correspondence, inspections, records, memos and notes of conversations with the contractor, invoices/vouchers, supporting documentation, and travel reports. The Cost Center Administrator shall ensure that all modifications to the contract are reviewed and approved by the Purchasing and Distribution Services Department, and submitted to the appropriate approval authority, in accordance with School Board Policies 6320 and 6345.
  - b. All key stakeholders with the school/department shall have access to and understand all contract milestones, commitments, and obligations.
  - c. If requested, the school/department shall be able to demonstrate that all contract related commitments and obligations are in compliance.
  - d. If problems with a contractor persist after attempts have been made to seek correction, the Purchasing and Distribution Services Department shall be contacted with the complaint to seek formal remediation.



2. Consultant Services  
When the services of a consultant are utilized, especially when analysis and research are involved and the contractor's performance results in a written report or other document (i.e., the deliverable), it is imperative that the Contract Administrator periodically check the contractor's performance and assure that it is progressing to the degree anticipated. Crucial milestone or progress reports may be required to be submitted by the contractor in the solicitation which would assist in post-award administration of the contract. If performance is found not to be up to expectations, the contractor shall be given a "cure" notice with specific guidance on what must be done to adequately meet performance expectations.
3. Revenue Based Contracts  
Revenue based contracts allow the School District to share in the revenues certain activities generate rather than require any expenditure of funds. Commissions normally are based as a percentage of sales. It is imperative that the School District have the ability to verify sales under agreements of this type to ensure that the school District is obtaining the correct percentage of profits.
4. District-Wide Contracts  
District-Wide contracts include terms and conditions and pricing schedules to be utilized by all Schools and Departments. District-Wide contracts may not have an assigned Contract Administrator. Schools and Departments who use these contracts will generally be responsible for the contract administration responsibilities.

### **XIII. GRANTS PROCEDURES PURCHASING GOODS AND SERVICES WITH FEDERAL FUNDS BOARD POLICY 6325**

#### **A. Background/Forward**

1. These procedures are established in compliance with 2 CFR 200 – Uniform Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

*The intent of the introduction of this Uniform Guidance is to deliver on the "promise of a 21st-Century government that is more efficient, effective and transparent", the Office of Management and Budget (OMB) is streamlining the Federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. These modifications are a key component of a larger Federal effort to more effectively focus Federal resources on improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders.*

This guidance provides a government-wide framework for grants management which will be complemented by additional efforts to strengthen program outcomes through innovative and effective use of grant making models, performance metrics, and evaluation. This reform of OMB guidance will **reduce administrative burden for non-Federal entities** receiving Federal awards while reducing the risk of waste, fraud and abuse.

2. Procurement systems and procurement activities impact all phases of grant management from the pre-award phase to post-award closeout. Federal grant procurement requirements are in addition to School Board Policies, State Board of Education Rules, Florida Statutes and Purchasing Procedures. The Purchasing and Distribution Services Department is responsible for ensuring that acquisitions are appropriately managed so that suppliers perform in accordance with an agreement's terms, conditions, and specifications. Ultimately, the Contract Administrator is responsible for the post-award or contract administration/performance of the contractor in compliance with the contract, in fulfilling that responsibility with regard to any agreement.

3. The requirements set forth by these procedures govern the District's purchasing processes and controls relative to acquisition actions proposed to be funded by Federal awards under the District's management.

For such acquisition actions, the District's Purchasing & Distribution Services shall comply with all applicable statutes, regulations, rules, and policies. In the event that any of these may conflict with the Uniform Guidance, the Uniform Guidance shall prevail.

In Uniform Guidelines §200.320 the following procurement methods are identified. *If you are uncertain of the appropriate method, consult with the Purchasing & Distribution Services Department and review the information provided in 2 CFR §200.317-200.326.*

4. **OMB Circular A-81 // 2 CFR 200 Consolidates and Supersedes with Procurement Standards §200.317 – §200.326 and Appendix II:**
  - a. **A-21** *Cost Principles for Educational Institutions*
  - b. **A-50** *Audit Follow-up*
  - c. **A-87** *Cost Principles for State, Local and Indian Tribal Governments*
  - d. **A-89** *Catalog of Federal Domestic Assistance*
  - e. **A-102** *Grants and Cooperative Agreements With State and Local Governments*
  - f. **A-110** *Uniform Administrative Requirement for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*
  - g. **A-122** *Cost Principles for Non-Profit Organizations*
  - h. **A-133** *Audits of States, Local Governments and Non-Profit Organizations*

## **B. Procurement Planning**

1. The first rule of procurement standards for grant management dictates that the subrecipient vs. contractor role should be assessed early in the grant cycle beginning with the grant program design, and it should be included in the grant proposal. ***It is critical that the determination is made early in the purchasing process, if not before.*** Early determination facilitates the request and consideration of appropriate information during the competitive solicitation process, and impacts whether the resulting agreements include applicable terms and conditions that require compliance with program requirements. The responsibilities contracted to an organization ultimately influence the level of oversight that needs to occur by the assigned District staff in order to best manage the risks associated with the program's integrity and overall success. It is essential that District staff comply with Purchasing Policies and Procedures when procuring goods and services with grant funds. In addition, the following sections define purchasing policies and procedures for grant funded purchases. All grant purchasing guidelines apply to the entire grant program budget and include grant funds, matching funds, and program income.
2. PORs from departments to Purchasing must include assurance by the requesting department that all special procurement conditions have been identified and communicated to Purchasing, or the department may request technical assistance from the Federal Grants Procurement Compliance Coordinator and/or assigned Purchasing staff member to ensure that special purchasing conditions have been identified and communicated to Purchasing. *Specific use of the Statement of Work (Exhibit D) as well as the development of an Acquisition Plan (Exhibit C) together will help to ensure the success of the purchase / solicitation.*

3. SBSC grantees must identify a non-Purchasing Grants Contract Administrator within their respective department to maintain oversight and ensure that all contractors perform in accordance with the terms, conditions and specifications of their grant contracts and/or purchase orders.
4. The Grants Contract Administrator in most cases will be someone located in the department directly benefiting or overseeing grant contract performance. The Grants Contract Administrator is responsible for the performance of the contract and should alert the Federal Grants Procurement Compliance Coordinator or assigned Purchasing staff member if there are specific contract compliance issues that she/he is unable to resolve.

**C. Procurement Records:**

1. An essential component of the purchasing process is careful, *accurate documentation of the procurement*. The records must be sufficient to provide a significant history of the procurement. The procurement file should be a comprehensive record of all the activities and decisions of the procurement process. The grant procurement file **must include**, but is not limited to, the following documentation found in the Procurement Checklist:
  - a. Selection procedures for the procurement transactions;
  - b. The rationale for the method of procurement;
  - c. Selection of contract type;
  - d. Contractor selected or rejected; and
  - e. The basis of contract price.

Additionally, the documentation must verify that the procurement provided for *full and open competition*. *In those cases, where competition is limited, the documentation must support the rationale to limit competition*. Staff should utilize Exhibit A – Buyer Procurement Decision Matrix for guidance along with the standard solicitation document to support these requirements.

2. When using Federal funds, the Purchasing and Distribution Services Department will conduct the procurement process in a manner that *prohibits* the use of statutorily or administratively imposed *in-state or local geographic preference* in the evaluation of bids or proposals, *except* in those cases where applicable Federal regulations expressly mandate or encourage geographic preference.
3. The District must follow Federal procurement procedures for grant expenditures when they are more restrictive than School Board Policies, State Board of Education Rules, applicable Florida Statutes and State requirements for Educational Facilities. *An adequate number of quotes are required for professional services unless the procurement meets the non-competitive procurement criteria.* Refer to the SBSC's Purchasing Procedures Manual to ensure compliance with procurement standards.

**D. Procurement Standards §200.318 – §200.326**

- A) §200.318 - General Procurement Standards – Considerations for Every Federal Grant Purchase

The non-Federal entity (i.e., SBSC) must use its own documented procurement procedures which reflect applicable School Board Policies, State Board of Education Rules, applicable Florida Statutes and State requirements for Educational Facilities, provided that the procurement conforms to applicable Federal law and the standards identified in this part.

Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or

purchase orders. At SBSC, it has been determined that the Department Grants Contract Administrator is responsible for this primary contract administration role with assistance as necessary by Purchasing and Distribution staff.

Prior to releasing any purchase order covered under these procedures, Purchasing shall execute and document a history of the steps and measures necessary to ensure that the following considerations have been explored and implemented where possible and feasible. Exhibit B – Federal Procurement Checklist Required Documentation is to be used for this purpose along with other attachments as necessary to support the purchasing process.

- a. Small and Minority Businesses, Women's Business Enterprises, Labor Surplus Area Firms. First consideration must be given to these types of businesses. Investigate and assess that any of these types are appropriate and available for the acquisition action at hand. Note the requirements below, under this heading.

Purchasing shall take all necessary and affirmative steps to assure that these classifications of businesses are given an opportunity to compete when possible. Affirmative steps include (1) placing qualified such businesses on solicitation lists and invitations, (2) making sure that such businesses are solicited whenever they are potential sources, (3) whenever feasible, dividing the requirements of the acquisition action at hand into smaller tasks or quantities to permit maximum participation by such businesses, (4) establishing delivery schedules – where the requirement permits – that encourage participation by such businesses, (5) using the services of organizations such as the Small Business Administration, business development associations, and similar, and (6) as applicable, requiring prime contractors to take the same steps as referenced herein.

- b. Recovered Materials. Investigate whether recovered materials may be involved in an acquisition action and, if so, consult § 200.322 Procurement of Recovered Materials in a later section and 40 CFR Part 247 for full compliance. For items costing **more than \$10,000** or if the value of the quantity acquired during the preceding fiscal year exceeded \$10,000 – **either individually or cumulatively over a year** – without losing or avoiding competition, consider first those items that contain the highest percentage of recovered materials.
- c. Unnecessary / Duplicative Purchases. Investigate and confirm that a purchase is necessary and is not duplicative. The department receiving the grant funds shall have the responsibility for investigating and confirming in writing using Exhibits B & C that the requested purchases are necessary and are not duplicative. Purchases that are denied shall be accompanied by documentation substantiating the denial. The Grants Contract Administrator shall be responsible for recording and retaining this documentation.
- d. Consolidating or Breaking Out. Investigate and assess opportunities to lower costs either by consolidating multiple purchase requests or by breaking out a single purchase request into separate instances. **The grantee department will be responsible for the consolidation of purchase requests in collaboration with Purchasing staff.**
- e. Rationale for Purchasing Method. Exercise due care and thought in developing the rationale for the purchasing method selected for an acquisition action.
- f. Lease versus Buy. In many instances, better value may be achieved through leasing rather than buying. Investigate and determine whether an acquisition action is an appropriate candidate for such a comparison and perform the analysis necessary to achieve best value by requesting pricing for each method in the solicitation document.

- g. Type of Agreement. Exercise due care and thought in selecting the type of agreement that is used for an acquisition action.
- h. Price. Explore and confirm how reasonableness of price will be evaluated, tested, and confirmed.
- i. Cost / Price Analysis. Conduct a Cost/Price Analysis (see Exhibits I & J respectively) for any acquisition action at or above the Simplified Acquisition Threshold of \$250,000.
- j. Acquisition Specifications and Evaluation Criteria. Establish the exact elements of the specifications the supplier must fulfill, of the criteria that will be used in evaluating responses, and the methodology for deciding upon and selecting the successful supplier. Detailed product specifications provided by the manufacturer should be avoided. 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 to define the performance, functionality, or other salient requirements of the procurement. The specific features of the named brand, which must be met by offers, should be clearly stated. (Refer to Exhibit D – Statement of Work Template.)
- k. Encouraged Use of Cooperatives, Group Purchasing Organizations, Inter-Agency and Inter-Institutional Agreements. (2 CFR § 200.318(e)) Investigate and determine whether competitively awarded contracts by purchasing cooperatives and/or group purchasing organizations (GPOs) provide sourcing opportunities for the acquisition at hand. Investigate, search out, assess, invite, and establish where feasible inter-agency (State of Florida) and other Florida public entity agreements that may result in economies and efficiencies from the cost-effective acquisition of common or shared products and services.
- l. Encouraged Use of Surplus Property. If acquiring equipment or supplies, use District, State of Florida, and/or Federal surplus property if feasible and more economical than procuring new. Document that each related website has been accessed and researched. The State of Florida through the Florida State Agency for Surplus Property (SASP) Program has responsibility for promoting and establishing the means for public agencies to obtain federal property. More information on the program can be found at: [https://www.dms.myflorida.com/business\\_operations/fleet\\_management\\_and\\_federal\\_property\\_assistance/federal\\_property\\_assistance/florida\\_state\\_agency\\_for\\_surplus\\_property\\_sasp\\_program](https://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/federal_property_assistance/florida_state_agency_for_surplus_property_sasp_program). The Director of Purchasing and Distribution Services and/or designee is responsible for acquiring federal surplus property on behalf of the District.
- m. Value Engineering. In construction and minor construction contracts, include terms and conditions that encourage or require value engineering. 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.
- n. Supplier Capacity and Ability. Investigate and assess whether suppliers have the capacity and operational wherewithal to satisfy all requirements of the acquisition actions in process. Consider elements such as integrity, compliance with public policy, record of past performance, and financial and technical strength.
- o. Time and Material Contracts. If time and material type contracts are proposed, investigate and assess whether they satisfy the special requirements (see below) governing their use. Generally, time and material type contracts may be

considered only when all other contract types are not suitable and must include a ceiling price that the contractor exceeds at its own risk. The *Grant Contract Administrator* is to assert a high degree of oversight of the contractor's cost controls and efficient methods of performing work. A time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

- 1) The actual cost of materials; and
- 2) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit.

- p. Cost-plus Percentage of Cost Contracts. ***Cost-plus percentage of cost type contracts are prohibited.***
- q. Prohibited Methods and Requirements. Do not allow contractors who develop or draft specifications, requirements, or statements of work for requests for quotes or formal competitive solicitations to compete for such competitive solicitations / procurements. Do not place unreasonable requirements for firms to qualify to do business with the District. Do not require excessive bonding.
- r. Excluded Parties / Debarment and Suspension. Prior to any award check the government wide Excluded Parties List System in the System for Award Management (SAM). SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority. If the party is identified on SAM as an Excluded Party, make no award. Exhibit H: System of Award Management (SAM) Search provides the method for documenting the search.
- s. No Geographic Preferences. Do not allow supplier physical location to be a factor of preference in the selection process. However, geographic location may be a selection criterion for A&E services when there are an appropriate number of qualified firms to compete given the nature and size of the project.
- t. Bonding Requirements. Determine whether bonding requirements (see Uniform Guidance §200.319 and §200.325) exist and, if so, take appropriate action for compliance.
- u. Protest Procedures. Ensure that bid protest procedures are included in the terms and conditions of the solicitation.
- v. Required Terms and Conditions. As appropriate, make sure that the required federal terms and conditions are included. States must also ensure that all purchase orders or other contracts they enter into using grant funds contain any clauses required by federal statute and regulations. Non-state grantees and subgrantees must use their own procurement procedures that reflect state and local procurement and contracting rules, provided that the procurements conform to applicable federal law.
  - 1) Contract and Administrative Issues. The SBSC alone (i.e., not the awarding agency) is responsible for the settlement of all contractual and administrative issues (awarding agency is responsible only if matter is of Federal concern; refer law violations to the appropriate local, state, or Federal authority having jurisdiction) for any of the following: source evaluation, protests, disputes, and claims.

2. §200.319 – Full and Open Competition

- a. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of the Uniform Guidance §200.319. Some of the situations considered restrictive of competition include, but are not limited to:
  - 1) Placing unreasonable requirements on firms in order for them to qualify to do business. Examples of situations that restrict competition (any of the following):
    - a) Unreasonable requirements
    - b) Unnecessary supplier experience
    - c) Excessive bonding
    - d) 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 Any arbitrary action in the procurement process
    - e) Requiring unnecessary experience and excessive bonding
  - 2) Noncompetitive pricing practices between firms or between affiliated companies.
  - 3) Noncompetitive awards to consultants that are on retainer contracts
  - 4) Organizational conflicts of interest
- b. Any arbitrary action in the procurement process The SBSC must ensure that all lists of prequalified sources are current and include enough of them to ensure maximum open and free competition. Potential sources must not be prevented from qualifying during the solicitation period.
- c. When using Federal funds, the District will conduct procurement in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographic preference in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Allowance may be made when geographic location may be a selection criterion for A&E services when there are an appropriate number of qualified firms to compete given the nature and size of the project.
- d. The District must follow Federal procurement procedures for grant expenditures when they are more restrictive than School Board Policies, State Board of Education Rules, applicable Florida Statutes and State requirements for Educational Facilities. An adequate number of quotes are required for professional services unless the procurement meets the non-competitive procurement criteria.

3. §200.320 – Methods of Procurement to Be Followed

**Notes:** The methods apply only to direct costs, not indirect

- a. Micro-Purchases (subset of small purchase procedures). Acquisition of supplies or services, the aggregate dollar amount of which is less than \$10,000 (or \$2,000 in the case of acquisition for construction subject to Davis-Bacon Act). Micro-purchases may be awarded without soliciting competitive quotations if the price is considered reasonable. To the extent practicable, micro-purchases must be distributed equitably among qualified suppliers. No cost or price analysis is required and does not have to be distributed among suppliers. (Note: The purchases of like commodities or contractual services shall not be divided/split so as to avoid/circumvent these monetary threshold requirements per FL 287.057(9), however, for Federal purchases, purchases are to be equitably distributed among qualified suppliers.) (Ref. 2 CFR 200.317-200.326.)

Small Purchases. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies and other property. The aggregate dollar amount of a purchase under this method must be between the Micro-Purchase Threshold and the Simplified Acquisition Threshold. i.e., \$10,000 but less than \$50,000. If small purchase procedures are used, price and rate quotations shall be obtained from an adequate number of qualified sources. Written quotes should be obtained from at least three (3) qualified sources. Federal Executive Orders 12549 and 12689 require that a contract or grant award with an amount expected to equal or exceed \$25,000 shall not be made to parties listed on the government wide Excluded Parties List System.

- b. Sealed Bids (\$50,000 or greater). Award recommendation shall be made to the lowest responsive, responsible bidder; price is a major factor. Bids are publically solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid is deemed to be the most, responsive and responsible bid and conforms to all the material terms and conditions of the invitation for bids. Sealed bid method is the preferred method for procuring goods and services in excess \$50,000 (with award recommendation being made to the most responsive, responsible bidder and price being a major factor) and public works construction in excess of \$100,000. If sealed bids are used the following requirements apply:
  - 1) The Invitation to Bid must contain complete, adequate and realistic specifications and attachments or purchase descriptions;
  - 2) The Invitation to Bid must be publically advertised and 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;
  - 3) The Invitation to Bid will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
  - 4) All bids will be publically opened at the time and place prescribed in the invitation for bids;
  - 5) Two or more responsible bidders are willing and able to compete effectively for the business;
  - 6) 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 to the lowest responsive and responsive bidder. Where specified in the 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; and
  - 7) Any and all bids may be rejected if there is a sound documented reason.
- c. Competitive Proposals (Greater than or equal to \$50,000). This procurement method is normally conducted when other factors, other than price, need to be a factor in the evaluation and award process with more than one source submitting an offer. The responses are in the form of either a fixed-price or a cost reimbursement type contract. It is generally used when conditions are not appropriate for the use of sealed bids and price is just one of many considerations. If this method is used the following requirements apply:



- 1) Request for Proposal must be publicized (using VendorLink) and identify all evaluation factors and their relative importance. Any response to publicized request for proposals must be considered to the maximum extent practical;
  - 2) Proposals must be solicited from an adequate number of qualified sources;
  - 3) A written method for conducting the technical evaluation of the proposals received and for selecting recipients, must be used and included in the file (Form D: SOW Template).
  - 4) Contracts must be awarded to the responsive firm whose proposal is most advantageous to the program, with price and other factors considered; and
  - 5) The grantee 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 even though A/E firms are a potential source to perform the proposed effort.
- d. Non-Competitive Proposals. A purchase of goods or services without formal competition. Non-competitive proposals can be utilized only in one or more of the following situations:
- 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 solicitations.
  - 3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District (i.e., NFE).
  - 4) After the solicitation of a number of sources, competition is determined inadequate.
  - 5) The item is an associated capital maintenance item that is procured directly from the original manufacturer or supplier of the time to be replaced (See Exhibit J, Price Analysis and Fair and Reasonable Price Determination).
  - 6) Noncompetitive award to professionals or consultants that are on retainer contracts are restrictive of competition and not allowable under OMB guidelines.
- e. Time and Material Contracts (T&M). These contracts may be used only after a determination that no other contract is suitable and if the T&M contract includes a price, above which the supplier has the complete risk. The cost of a T&M contract is the sum of the actual cost of the materials and direct labor hours charged at fixed hourly rates that include wages, overhead, general and administrative costs, and profit. Accordingly, each contract must set a ceiling price that the supplier exceeds at the supplier's own risk. The Department Grant Contract Administrator must assert a high degree of oversight in order to obtain reasonable assurance that the supplier is using efficient methods and cost controls.

1) Information on time and material contract

Time and material contracts are those whose cost to a nonfederal entity is the sum of:

- a) The actual cost of materials; and
- b) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. The view of the Uniform Administrative Requirements is that this formula generates an open-ended contract price, there is no incentive to contractors for cost control or labor efficiency and therefore, each contract must set a ceiling price at the supplier's own risk. Accordingly, the Department Grant Contract Administrator must assert a high degree of oversight in order to obtain reasonable assurance that the supplier is using efficient methods and cost controls.

f. Construction or Facility Improvement Contracts, Or Subcontracts Exceeding \$150,000

- 1) A bid guarantee equivalent to 5% of the bid price from each bidder (such as bid bond or certified check), a standards bond on the part of the contractor for 100% of the contract price, and a payment bond on the part of the contractor for 100% of the contract price must be included. The performance and payment bond required by 1013.47, F.S., may be waived prior to the awarding of contracts by the School Board for construction, renovation, remodeling, or contracts of two hundred thousand dollars (\$200,000) or less. The waiver shall be based on recommendations of the Superintendent and the project architect.

4. §200.321 – Contracting with Small and Minority Businesses, Women's Business Enterprises, And Labor Surplus Area Firms

a. Purchasing shall take all necessary and affirmative steps to assure that these classifications of businesses are used when possible. Affirmative steps include:

- 1) Placing qualified such businesses on solicitation lists and invitations,
- 2) Making sure that such businesses are solicited whenever they are potential sources,
- 3) Dividing the requirements of the acquisition action at hand into smaller tasks or quantities to permit maximum participation, whenever feasible, by such businesses,
- 4) Establishing delivery schedules – where the requirement permits – that encourage participation by such businesses,
- 5) Using the services of organizations such as the Small Business Administration, business development associations, and similar, and
- 6) Requiring prime contractors, as applicable, to take the same steps as referenced herein.

b. School Board of Seminole County, Florida's Affirmative Action Program

- 1) The intent of the SBSC Affirmative Action Program is to promote equal opportunity for all segments of the contracting community to participate in School Board contracts and to encourage and facilitate maximum participation of small business enterprises including minority, local, veteran and women-owned businesses in all SBSC procurements in compliance with §200.321, but also to be a good community citizen.
- 2) The School Board shall make a good faith effort to provide written notice to a reasonable number of minority business enterprises that their interest in contracting with the School Board is being solicited in sufficient time to allow the minority business enterprises to participate effectively. Solicitations will be posted to VendorLink

(<https://www.myvendorlink.com/common/default.aspx>), the School District's online solicitation notification systems. A notice is sent to all firms who have registered to receive notification for this particular commodity or service. The firms download the solicitation document, complete the required paperwork and either mail or deliver their response to the Purchasing and Distribution Services Department.

- 3) The School Board shall take all necessary affirmative steps to assure that DBE, MBE, WBE, SBE, Veterans, Local and labor surplus area firms are used when possible including but not limited to:
  - a) Promoting the registration of qualified small and minority businesses and women's business enterprises on solicitation systems;
  - 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, etc.
- 4) Minority State or Federally Funded Grant Procurements. The Board recognizes that certain procurement procedures for state or federally funded grant programs may conflict with SBSC procedures. The Director of Purchasing & Distribution Services is authorized to modify Purchasing procedures in order to comply with procurement procedures for state or federally funded grant programs.

5. §200.322 – Procurement of Recovered Materials

- a. The District encourages investigations in to whether recovered materials may be involved in an acquisition action. For items costing **\$10,000 or more**, or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000 – **either individually or cumulatively over a year** – without losing or avoiding competition, consider first those items that contain the highest percentage of recovered materials.
- b. The District affirmatively encourages and promotes its preference for maximizing recovered material content when purchasing those items designated by the Environmental Protection Agency (EPA) per 40 CFR Part 247 found at: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#products>. Products included in the designation are construction, landscaping, non-paper office, paper, park and recreation, transportation, vehicular and miscellaneous products.
- c. Purchasing will periodically market and promote this program to all District units.
- d. Purchasing has incorporated terms and conditions in our documentation that requires bidders to estimate and certify the recovered material content of the above reference EPA-designated items in its bids, quotes, and solicitations will incorporate.

6. §200.323 – Contract Cost and Price

- a. For every procurement action in excess of the Simplified Acquisition Threshold, (i.e., \$150,000), including contract modifications, the **grantee department must perform a cost or price analysis**. A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees **must** make independent estimates **before bids or proposals are received**. Some form of Cost (Exhibit I) or Price (Exhibit J) Analysis shall be made and documented in the procurement file in connection with every procurement action. Purchasing staff is available for assistance.
- b. If there is no price competition, the Grant Administrator must negotiate profit as a separate element of price, and in all cases in which cost analysis is performed. The measurement of fair and reasonable profit may take into consideration:
  - 1) the complexity of work,
  - 2) the risk borne by the supplier,
  - 3) the supplier's investment, the extent of subcontracting, the supplier's past performance, and profit margins that prevail in the surrounding area for similar requirements.
  - 4) Costs or prices based on estimations are allowable only as set forth in 2 CFR 200.403.
- c. Must not use cost plus percentage of cost and percentage of construction cost methods.
- d. Price Analysis: Comparison of prices of multiple bids or information from other sources such as established catalogs or market prices, or prices for similar past purchases. (Form J – Fair and Reasonable Price Determination)
  - 1) Price Analysis for Micro-Purchases: for purchases of \$3,500 or less (Micro-Purchases), the District will simply annotate how the District made its price fairness and reasonableness determination (e.g. professional market experience, market trend, previous purchase, and catalog price). The rationale for the procurement method uses and selection of contract type is not required for purchases of \$3,500 or less, but are for purchases of greater amounts.
  - 2) Price Analysis for Sealed Bidding or Competitive Quotes: As the preferred method for contracting for supplies, equipment and construction, the competitive pricing forces of the marketplace determine the reasonableness of the low price obtained through sealed bidding. Nevertheless, the District should always compare the Independent Cost Estimate (Exhibit E) to the low competitive bid received. In the event they are significantly different, the District will need to verify that either the estimate or the market price is valid. Otherwise, no further price or cost analysis is required under sealed bidding.

- e. Cost Analysis: A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost such as professional consulting and architectural and engineering services contracts). A cost analysis includes verifying the proposed cost data, the projections of the data and the evaluation of specific elements of cost and profit. Evaluation by the Grant Administrator of the separate elements that make up a contractor's total cost proposal or price to determine if they are allowable, directly related to the requirement and reasonable for the value received. (Exhibit I – Independent Cost Analysis)
  - 1) Cost Analysis for Professional, Consulting, and Architectural and Engineering Services: This method is most often used to contract for professional, consulting, and architect/engineering (A/E) services. (See 24 CFR 85.36(d)(3) for a definition). An evaluation of the reasonableness of the price is also required under Florida's' Consultants Competitive Negotiations Act (CCNA). To determine the reasonableness of proposed costs, the District shall obtain cost breakdowns from the offers' showing all the elements of their proposed total costs. The overall objective should be to negotiate total prices that are fair and reasonable.
  - 2) Cost Analysis for Construction and Construction Management Contracts: This includes all contracts and contract modifications negotiated based on cost for construction management or construction, alteration or repair of buildings, transit facilities, or other kinds of real property.
    - a) Construction contracts awarded using sealed bidding do not require cost analysis, but construction contracts awarded using any method other than sealed bidding, and all modifications to construction contracts require cost analysis.
    - b) Grantees will negotiate profit as a separate element of price for each contract where there is not price competition and all cases where cost analysis is performed.
    - c) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates in negotiated prices are consistent with the Uniform Guidance, Cost Principles.
    - d) Construction: *The cost plus percentage of cost and percentage of construction cost methods for contracting shall not be used.*

7. §200.324 – Federal Awarding Agency or Pass-Through Entity Review

- a. If Federal awarding agency or pass-through entity requests, District must make available technical specs on proposed procurements. This should take place before the specifications are incorporated into a solicitation, but may take place after the specifications are incorporated; review should be limited to the technical specifications.

- b. If Federal awarding agency or pass-through entity requests, District must make available solicitations and cost estimates under the following conditions:
  - 1) District's Procurement Standards don't comply with OMB Circular A-81: Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards
  - 2) If the procurement exceeds the Simplified Acquisition Threshold (\$250,000) and any of the following conditions apply
    - a) Procurement is to be awarded without competition or
    - b) Only one response / offer is received or
    - c) Specifies a "brand name" or
    - d) Procurement is sealed bid and is to be awarded to other than low bid or
    - e) Proposed modification changes the scope or increases the amount above the Simplified Acquisition Threshold
  
- c. If District's procurement standards do comply with OMB Circular A-81, then it is exempt from §200.324 (b)
  - 1) District may request review for compliance certification by the Federal awarding agency or pass-through entity. Generally, these reviews must occur where
    - a) There is high-dollar funding and
    - b) Third party contracts are awarded regularly
  - 2) District may self-certify
    - a) But Federal awarding agency still has right to survey system and may rely on District's written assurances of compliance
    - b) Assurances must cite specific policies, procedures, regulations, or standards
    - c) Still, District must make system available for review

8. §200.325 – BONDING REQUIREMENTS (Construction)

- a. For construction or facility improvement contracts exceeding the Simplified Acquisition Method Threshold, the District's bonding requirements may be used provided that the Federal interest is adequately protected. If a determination of such protection has not or cannot be made, the minimum requirements are as set forth below.
- b. Bid Guarantee of at Least 5% of Bid Price. The guarantee must offer 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 required within the specified time.
- c. Performance Bond for 100% of the Contract Price. The bond secures fulfillment of all the contractor's obligations under the contract.
- d. Payment Bond for 100% of the Contract Price. The bond assures payment as required by law of all persons supplying labor and material in execution of the work accomplished under the contract.
- e. Contract Performance and Payments. Directly or through the Purchasing appointed departmental representative managing the contract, ensure that contract performance and payments are adequately monitored, managed, and executed.

9. §200.326 – Contract Provisions

All contracts made by SBSC under a Federal award contain provisions covering the following as applicable and consistent with Uniform Guidance 2 CFR Pt. 200 App.II. The appropriate language is referenced in Exhibit K and was provided by the School Board Attorney.

10. §200.329 Reporting on Real Property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

If the District acquires real property under a Federal award (with Federal funds), title vests in the District. The property must be used for the originally authorized purpose as long as it is needed for that purpose, and during that time, the District must not dispose of it or encumber its title. When the District no longer needs the property for the originally authorized purpose, it must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must require one of the three methods set forth below.

- a. Retain Title after Compensating the Awarding Agency. The amount paid to the Federal awarding agency is computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase and costs of improvements to the fair market value of the property. In those instances where the District acquires replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
- b. Sell the Property and Compensate the Awarding Agency. The amount due to the Federal awarding agency is calculated by applying the awarding agency's percentage of participation in the cost of the original purchase and improvements to the proceeds of the sale after deducting any actual and reasonable selling and fixing-up costs. If the award has not been closed out, the net proceeds from the sale may be offset against the original cost of the property. If the District is directed to sell the property, the District must provide for competition to the extent practicable and result in the highest possible return.
- c. Transfer Title to the Awarding Agency or to a Designated Third Party. The District is entitled to be paid an amount calculated by applying the District's percentage of participation in the purchase of the property and any improvements to the current fair market value of the property.

11. § 200.439 Equipment and Other Capital Expenditures

If the District acquires equipment or other capital assets under a Federal award (with Federal funds), title vests in the District. The District must use the equipment for the authorized purposes of the project until funding for the project ceases, or until the equipment is no longer needed for the purposes of the project. The District must not encumber the equipment without approval of the awarding agency or pass-through entity. The District must use and dispose of the equipment as follows:

- a. Use. The District must use the equipment for the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the award. The District must not encumber the equipment without prior approval of the awarding agency. When the equipment is no longer needed for the original program or project, the District may use it first in other activities supported by the awarding agency, and second in activities supported by other Federal agencies. During the time the District is using the equipment for the project or program, it must also make the equipment available for use on other projects or programs currently or

previously supported by the Federal government, provided that such use does not interfere with the work on the project or program for which it was originally acquired. The District must not use the equipment to provide services for a fee that is less than private companies charge for equivalent services. If the District acquires replacement equipment, it may use the replaced equipment as a trade-in or sell it and use the proceeds to offset the cost of the replacement.

- b. Management. The District must maintain records that include a description of the equipment, a serial number or other identification number, the source of funding, who holds title, the acquisition date and cost, the percentage of Federal participation in the project costs for the award under which the equipment was acquired, the location, use and condition, and any ultimate disposition data including the date of disposal and sale price. At least once every two years the District must take a physical inventory of the equipment and reconcile it with the records. The District must maintain a control system to safeguard against loss, damage, or theft. The District must investigate any loss, damage, or theft. The District must develop maintenance procedures that keep the equipment in good working order. The District must develop proper procedures to ensure the highest possible return if the equipment is sold.
- c. Disposition. When equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, the District must – unless otherwise provided in Federal governing statutes or regulations – request disposition instructions from the awarding agency. Equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. For equipment with a fair market value greater than \$5,000, if the awarding agency fails to provide disposition instructions within 120 days, the District may retain or sell it. In such case, the awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency’s percentage of participation in the cost of the original purchase. If the District sells the equipment, the awarding agency may permit the District to deduct and retain from the Federal share the lower of \$500 or ten percent of the proceeds for its selling and handling costs. The District may alternatively transfer title to the equipment to the Federal Government or to an eligible third party provided that the District must be entitled to compensation for its attributable percentage of the current fair market value. If the District fails to take appropriate disposition actions, the awarding agency may direct the District to do so.

#### **XIV. FEMA APPLICANT COMPLIANCE WITH PROCUREMENT REQUIREMENTS**

##### **A. Introduction to the Procurement Process**

FEMA’s review of Public Assistance (PA) Program grants and those entities which receive public assistance grants are subject to several federal requirements beyond those in the Stafford Act. These requirements include: the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments [hereinafter FEMA’s Common Rule]; and OMB Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations). These set the minimum requirements for grantee and subgrantee procurement standards for federal grants. The Common Rule contains specific rules applicable to state, tribal, and local procurements involving federal grant funds.

It is virtually inevitable that public assistance applicants will need to procure goods or services (including construction) as they repair their damaged facilities with public assistance grant funds. This section reviews the requirements that applicants must follow in acquiring goods and services. As noted previously, the Common Rule does not apply to non-profit organizations, including schools and hospitals, but in reviewing both the Common Rule and OMB Circular A-110, the relevant comparable provisions in the two documents have significant similarities.



## B. Procurement Standards for Grantees and Subgrantees

States must use the same policies and procedures for procurements using federal grant funds as they use for procurements using non-federal grant funds. States must also ensure that all purchase orders or other contracts they enter into using public assistance funds contain any clauses required by federal statute and regulations. Non-state grantees and subgrantees must use their own procurement procedures that reflect state and local procurement and contracting rules, provided that the procurements conform to applicable federal law and standards identified in the Common Rule. These procedures and requirements include that the grantee:

1. Must have a contract administration system;
2. Must have a written code of standards for its employees regarding conflicts of interest;
3. Must have a system to assure economical purchases and avoid unnecessary ones;
4. Encourage lower prices by using:
  - a. State and local intergovernmental agreements to obtain common goods and services;
  - b. Federal excess or surplus property;
  - c. Value engineering analysis for each item in contracts for large construction projects;
5. Use only responsible contractors;
6. Must maintain sufficient records to detail a procurement's history, such as:
  - a. Rationale for the procurement method;
  - b. Selection of contract type;
  - c. Contractor selection or rejection; and
  - d. Basis for the contract price;
7. May use time and materials contract only under certain circumstances;
8. Must be responsible for settling all contractual and administrative claims; and
9. Must have protest procedures: Protest procedures exist to handle procurement disputes, and grantees and subgrantees will usually have protest procedures in their procurement regulations to resolve disputes;
10. Grantees and subgrantees must disclose any protests to FEMA;
11. Protesters must exhaust all administrative processes with the grantee before pursuing a protest with FEMA;
12. FEMA's review of a protest is limited to reviewing violations of federal law and violations of the grantee's protest procedures.

In addition, states must ensure that every subgrant contain all clauses that federal statute and executive orders and their implementing regulations require and make certain that subgrantees are aware of applicable federal and state rules and requirements. They must ensure that there is a provision requiring subgrantees to retain records and provide reasonable access to the required records. States must also conform any advances of grant funds to subgrantees to the same standards of timing and amounts that apply to cash advances by federal agencies. All grantees must follow the provisions of the Common Rule and ensure that every subgrant includes a provision for compliance with these provisions as well. Grantees should make every effort to ensure that their subgrantees understand these requirements.

## C. Competition Requirements

In general, open and unfettered competition for emergency work (FEMA Public Assistance Categories A and B) and permanent work (FEMA Public Assistance Categories C-G) is the rule. The grant provisions in the Common Rule set forth a full competition requirement unless an exception authorizes otherwise. Even if a grantee carries out competitive procurement, there can still be situations that FEMA considers restrictive of competition and therefore not in the spirit of full and open competition. These can include:

- 1) Requiring unnecessary experience and excessive bonding;
- 2) Placing unreasonable requirements on firms in order for them to qualify to do business;
- 3) Noncompetitive pricing practices between firms or between affiliated companies;
- 4) Noncompetitive awards 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
- 7) Any arbitrary action in the procurement process. OMB Circular A-110 requires that non-profit organizations make awards to a bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, when the organization considers price, quality, and other factors. In addition, the solicitations must clearly set forth all requirements that the bidder or offeror must fulfill in order to evaluate the offer. The organization may reject any and all bids when it is in the organization's best interests to do so.

#### D. Reasonable Cost Requirement

A reasonable cost is defined as a cost that, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the Considerations include evaluating historical costs for similar work in the region, reviewing published unit cost data for the work, and comparing costs with the FEMA Schedule of Equipment Rates and Cost Codes. The source of costs may include the applicant's force account labor, equipment and materials, contracted services, and mutual aid agreements. Regardless of the terms of an applicant's contract, all costs must be reasonable and meet PA Program eligibility rules for PA reimbursement.

FEMA may review proposed or existing contracts for compliance with eligibility rules and reasonableness of costs, but such a review does not constitute approval. Moreover, grantee contractual obligations do not bind FEMA because FEMA is not a party to the contracts; thus, the grantee is responsible for paying for its contracts regardless of whether FEMA reimburses for the costs.

When an applicant fails to use a competitive process, or uses a flawed process in violation of the Common Rule, FEMA may disallow all or part of the costs.

Notwithstanding noncompliance with procurement requirements, however, FEMA may choose to reimburse the applicant for its reasonable costs. FEMA may determine reasonable costs by analyzing the applicant's procurement process, historical documentation, what other applicants in the same disaster are paying for like work, or published cost codes. The DHS Inspector General has issued a report discussing the importance of only reimbursing costs that are reasonable or otherwise following the Common Rule.

The reasonable cost requirement applies to all contract costs for the performance of eligible work: labor, materials, and equipment. FEMA takes a proactive approach by reviewing and documenting an applicant's procurement and contracting procedures in an effort to communicate risks to reimbursement.

In addition, the Common Rule allows a reasonable profit for the contractor (but not for the grantee or subgrantee). Grantees and subgrantees must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where they perform a cost analysis. To establish a fair and reasonable profit, grantees and subgrantees should consider the complexity of the work the contractor is to perform, the risk that the contractor will bear, the contractor's investment, the amount of subcontracting, the quality of the contractor's record of past performance, and industry profit rates in the surrounding geographical area for similar work. The geographic area served is the state, county, congressional district, and/or metropolitan statistical area where the vendor provides or delivers products and/or services.

#### E. Selection Processes for Procurement

FEMA requires grantees to be able to provide the detail of procurement transactions, including: the rationale for the method of procurement, the selection of contract type, contractor selection or rejection, and the basis for those decisions, as well as the basis for the contract price. 543 The selection procedures should incorporate a clear and accurate description of the technical requirements for the material, product, or service that the grantee or subgrantee wishes to

procure. Regulations forbid features that unduly restrict competition and require that the applicant for federal funds identify all technical requirements or specifications. This chapter discusses limited exceptions to this rule. In addition, before receiving bids, grantees must make independent estimates. FEMA may require applicants to submit this cost analysis and other documentation pre-award to FEMA for review. If adequate price competition is lacking, documented cost analysis will be essential to demonstrate price reasonableness.

## F. Procurement Methods

FEMA regulations allow the following procurement methods:

### 1. Procurement by Small Purchase Procedures under \$50,000

In procurement by small purchase procedures, the applicant must obtain price or rate quotations from an adequate number of qualified sources.

### 2. Procurement by Sealed Bids

In procurement by sealed bids grantees and subgrantees must publicly advertise bids and solicit bids from a number of known suppliers, providing them sufficient time prior to the date set for opening bids. The invitation to bid must be specific and must clearly define items or services clearly, so bidders can respond. Grantees and subgrantees must publicly open all bids at the time and place set in the invitation for bids. They may reject any or all bids if there are sound, documented reasons. The lowest responsive and responsible bidder will receive a firm fixed-price (lump sum or unit price) written contract. This sealed bid method is the preferred method for procuring construction if the following are true:

- a. A complete, adequate, and realistic specification or purchase description is available;
- b. Two or more responsible bidders are willing and able to compete; and
- c. The procurement lends itself to a firm fixed price contract and the selection can be made based on price.

### 3. Procurement by Competitive Proposals

Applicants use procurement by competitive proposals where the competitors' qualifications are of the utmost importance and price is not the critical issue. Fair and reasonable compensation is, however, a factor. Generally, applicants use this method when conditions are not appropriate for the use of sealed bids. For example, applicants use this method in the procurement of qualifications-based procurements, such as architectural or engineering professional services. Normally, more than one source submits an offer, and applicants award either a fixed-price or cost reimbursement type contract. To use this method, applicants must publicize requests for proposals and identify all evaluation factors and their relative importance. Applicants must solicit proposals from an adequate number of qualified sources. Grantees should have a method for conducting technical evaluations of the proposals and for selecting awardees. The responsible firm, whose proposal is most advantageous to the program, when the grantee or subgrantee considers price and other factors, will receive the award.

### 4. Procurement by Noncompetitive Proposals and Contracting When a Public Exigency or Emergency Exists

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. This method is the least favored method and may only be used if other procurement methods described in 44 CFR Part 13 are infeasible. In other words, all contracts should be competitively bid unless one of the exceptions discussed in this subsection apply.

For this type of procurement to be used, FEMA requires a cost-analysis, that is, the grantee must verify the proposed cost data, projections of the data and evaluation of the specific elements of cost and profit. A cost analysis is important to establish the reasonableness of the proposed contract price, particularly with sole source solicitations, when adequate price competition is limited and the contracts involve professional, consulting or engineering/architectural services. The method and degree of the cost analysis are dependent on the facts surrounding the procurement.

Grantees may use procurement by noncompetitive proposals only when the award of a contract is infeasible under the other methods of procurement described in this chapter and the public exigency or emergency will not permit a delay resulting from the amount of time required to obtain competitive bidding. This situation occurs most frequently with emergency debris removal, for instance, trimming and removing dangerous tree limbs or clearing roads for emergency access. It is important not to confuse this type of emergency contracting with FEMA's division of disaster work into "emergency" and "permanent" work. Performing emergency work (Categories A and B) does not relieve the applicant from the requirements of competitive bidding; not all emergency work is time sensitive to the point where competitive bidding is infeasible. Grantees and subgrantees thus cannot justify awarding a noncompetitive contract simply by using the term "emergency work," and grantees also should not make noncompetitive bid awards for work lasting for several days or weeks after the disaster or for long-term debris removal. FEMA will determine eligibility for reimbursement based upon a review of the facts.

Only FEMA has the authority to make eligibility decisions. Contractors cannot make eligibility determinations or determine what is appropriate emergency contracting or emergency work.

FEMA may approve reimbursement under a time and materials contract for work that is necessary immediately after a disaster but generally only for the first 70 hours of necessary work immediately after the disaster when a clear scope of work cannot be developed. For example, FEMA may allow limited use of these contracts when necessary debris removal work is needed immediately after a disaster, when a clear scope of work cannot be developed, the work will not exceed 70 hours, and only after it has been determined that no other contract is suitable and the contract contains a ceiling price that the contractor exceeds at its own risk. If the work is to last longer, the grantee or subgrantee should seek Competitive bids for the work as soon as possible. An applicant should consult FEMA when it is considering using a time and materials contract.

In some cases, a grantee or subgrantee may use an expedited procurement process that allows for shorter time frames for receiving competitive bid proposals where time is of the essence, such as for debris removal. For example, a grantee might develop a scope-of-work, identify contractors that can do the work, and make telephone invitations for bids. In addition, prior to a disaster, grantees may take affirmative steps to expedite the procurement process without jeopardizing potential grant funding, including, to the extent that the disaster is known, the contract can then be completed with the appropriate scope of work and advertised in a timely manner.

- a. Pre-qualified contractors: Contractors typically must have insurance, bonding, and licensing prior to an applicant awarding them a contract. Grantees may advertise a request for qualifications for contractors to establish their company as a credible candidate for a contract award. The grantee may then invite the pre-qualified contractors on the list to bid on a contract on an as-needed basis. The pre-qualified contractor can then focus on developing a cost estimate rather than assembling documentation in order to qualify for bidding. This approach may save the grantee time in getting the contract awarded.
- b. Pre-event contracts: A grantee may choose to solicit bids and award contracts in non-disaster times. This approach allows time for a deliberate procurement process and gives applicants flexibility in mobilizing the appropriate resources in anticipation of an event. Pre-

event contracts can result in higher costs, and grantees should be careful to ensure the proposed scopes of work provide flexibility for a variety of event types and sizes.

#### G. Procurement Documentation

When grantees and subgrantees follow the proper procurement rules, the process of so doing naturally generates documentation. FEMA requires this documentation. Procurement documentation must be available for review for compliance with applicable federal law. Documentation includes the scope of work or the contract, number of bidders, and each bidder's unit cost or lump sum, and the reasons for disqualifying a bidder.

Before receiving bids, grantees and subgrantees must make independent cost estimates. FEMA may require grantees and subgrantees to submit this cost analysis and other documentation pre-award to FEMA for review. If adequate price competition is lacking, documented cost analysis will be essential to demonstrate price reasonableness.

#### H. FEMA Review of Grantee and Subgrantee Contracts

FEMA's review of documented procurement activity may take place at various times during the life of a PA project, ranging from pre-award of the contract to closeout of the project. When FEMA believes it is necessary to ensure that the item and/or service specified in the project is the one being proposed for purchase, the grantee must make available to FEMA technical specifications on proposed procurements. This review generally takes place before the grantee or subgrantee even publishes the solicitation, but it can take place afterwards as well. Upon request, the grantee or subgrantee must make available for pre-award review the procurement documents, such as requests for proposals, invitations for bids, responses to the invitations, independent cost estimates, etc. This information is critical, particularly when the grantees' procedures do not comply with Part 13.569 The grantee or subgrantee must also make available the information in the following circumstances when the procurement is over the simplified acquisition threshold:

1. When the grantee or subgrantee's procurement procedures fail to comply with the procurement standards in Part 13;
2. When the project is awarded without competition, or only one bid is received in response to a solicitation;
3. When the procurement specifies a brand name;
4. When the contract is awarded to other than the lowest bidder under a sealed bid procurement process; and
5. When a proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
6. The grantee or subgrantee must provide written justification when there is an exception to full and open competition.

#### I. General Applicant Contract Provisions

FEMA recognizes three types of contracts for reimbursement:

1. Lump sum: a contract for work within a prescribed boundary with a clearly defined scope and a total price
2. Unit price: contract for work done on an item-by-item basis with cost determined per unit; and
3. Cost-plus-fixed-fee: either a lump sum or unit price contract with a fixed contractor fee added into the price. Every applicant contract should be in writing. There are many reasons to spell out contract terms besides avoiding confusion, misinterpretation, mistake, and delay. One of the ancillary benefits of a written contract is that it produces the necessary documentation to assist with writing PWs and can demonstrate price reasonableness to justify FEMA reimbursement. Because FEMA will only pay for reasonable and eligible costs, in the absence of a written contract, it is extremely difficult to quantify reasonable costs and justify

eligibility. Minimum documentation for a PW and a contract are described at length in "Elements of a Project Worksheet."

In addition, every contract must contain certain specific items. Federal law requires the following contract terms:

1. The administrative, contractual, and legal remedies when contractors breach the contract, including sanctions and penalties for such breach with contracts over the simplified acquisition threshold;
2. A process for grantee termination of the contract for cause or convenience and the basis for settlement for contracts over \$10,000;
3. In contracts over \$10,000, provisions assuring that the parties will comply with all applicable federal and state regulations;
4. FEMA's requirements and regulations pertaining to reporting;
5. FEMA's requirements and regulations pertaining to copyrights, rights in data, and patent rights with respect to any discovery or invention arising or developed in the course of or under the contract;
6. Access by FEMA, the grantee, subgrantee, the Comptroller General of the U.S. or any of their duly authorized representatives to any contractor books, documents, papers, and records that are directly pertinent to that specific contract for the purpose of audit, examination, excerpts, and transcriptions;
7. Terms insuring retention of all required records for three years after final payment is made and all other pending matters are closed; and
8. Language indicating that FEMA will only pay FEMA-determined eligible work and a time frame for required reporting and invoices.

#### J. Contract Prohibitions

##### 1. Conflicts of Interest

The grantee must abide by FEMA's conflict of interest regulations.<sup>578</sup> Grantees and subgrantees must maintain a written code of standards regarding conduct of their employees engaged in procurement. This code of standards shall provide penalties, sanctions, or other disciplinary actions, to the extent that these sanctions do not violate state law. One basic rule is that no employee, officer, or agent of the grantee shall participate in selection, award, or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. A conflict would arise if the employee, officer or agent, any member of his or her immediate family, his or her partner, or any organization that employs or is about to employ any of those named has a financial or other interest in the firm the applicant selects for the contract. Further, the grantee's officers, employees, or agents cannot solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements. It is important to note, as well, that ethical violations can rise to the level of criminal prosecution.

##### 2. No Contracts to Suspended/Debarred Entities

Suspension and debarment are administrative tools to address waste, fraud, abuse, poor performance, program noncompliance, or other misconduct. "Debarment" means action taken by a debarring official to exclude a contractor from government contracting and government approved subcontracting for a reasonable, specified period. A contractor that is excluded is "debarred." "Suspension" means action taken by a suspending official to disqualify a contractor temporarily from government contracting and government-approved subcontracting. A contractor that is disqualified is "suspended." Contracts awarded to suspended or debarred contractors are prohibited. Suspension and debarment actions thus prevent companies and individuals from participating in government contracts, subcontracts, loans, grants, and other assistance programs. The effect of a federal agency's suspension and debarment is government-wide. In short, suspension and debarment actions protect the government from doing business with individuals,

companies, or recipients who pose a business risk to the government. The federal government should list entities that are debarred or suspended from doing business with the federal government on the Excluded Parties List System (EPLS).

Suspension, for a set period of time determined on a case-by-case basis, may be based on indictments, information, or adequate evidence involving environmental crimes, contract fraud, embezzlement, theft, forgery, bribery, poor performance, nonperformance, or false statements. They are temporary actions that may last up to 18 months and are effective immediately. Debarment may be based on convictions, civil judgments, or fact-based cases involving crimes, contract fraud, embezzlement, theft, forgery, bribery, poor performance, nonperformance, or false statements, as well as other causes. Statutory debarments occur by operation of law following criminal convictions under certain laws, i.e., the Clean Water Act and Clean Air Act.<sup>590</sup> These last until the debarring official certifies that the condition giving rise to the conviction has been corrected. Suspensions and debarments can be extended to include subsidiaries, parent companies, and other individuals.

FEMA is required to establish procedures for the effective use of the EPLS, as well as procedures to provide for effective use and dissemination of the list to assure that grantees and subgrantees at any tier do not make awards to suspended or debarred entities. As of the date of this publication, FEMA has not established these procedures.

### 3. Prohibited Contract Terms

The Common Rule does not permit applicants to use a cost plus percentage-of-cost contract. *Simply calling the percentage on top of the contract an “administrative fee” will also not be acceptable to FEMA.* FEMA disfavors “piggyback” contracts. A piggyback contract occurs when one applicant utilizes a contract awarded by another applicant and simply expands the existing contract to encompass new work. For example, County A may utilize County B’s debris removal contract by changing the scope of work to include County A’s geographical jurisdiction. Even if County B’s contract was competitively awarded, the bids received and contract awarded would not have been based on County A’s scope of work. Piggybacking may be legal under applicable state law, but the use of such a contract will jeopardize FEMA funding. If the applicant uses prohibited contracts or terms, FEMA may deny funding all together or determine what it considers fair, reasonable, and eligible under the circumstances and reimburse accordingly.

### 4. Prohibition against Discrimination

FEMA does not tolerate discrimination. The Stafford Act requires that all governmental bodies and other organizations involved in the distribution of assistance or supplies or other relief activities comply with all federal and state nondiscrimination regulations. The Stafford Act and its regulations forbid discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status. In addition, the Common Rule favors small firms, minority firms, women’s business enterprises, and labor surplus area firms when possible. Affirmative steps to this end include:

- a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- b. Assuring that the grantees and subgrantees solicit small and minority business and women’s business enterprises 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 business and women’s business enterprises;
- d. Establishing delivery schedules where the requirement permits which encourage participation by small and minority business, and women’s business enterprises;
- e. Using the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce; and

- f. Requiring the prime contractor, if subcontracts are let, to take these same affirmatives steps as well.

K. Bonds

A bond is a written instrument that a bidder or contractor executes with a second party, generally, an insurance company or a bank, to assure fulfillment of the contractor's obligations to a third party identified in the bond. In the PA Program, the grantee is usually the third party identified in the bond. If the contractor's obligations are not met, the bond assures payment up to the amount of the bond for any loss that the grantee sustains. Whether the bond is for service or construction contracts, it assures the federal government that a prospective contractor is capable of fulfilling the contract requirements. For contracts over the simplified acquisition threshold, after FEMA determines that the grantee has adequately protected the federal government's interests, FEMA may accept whatever requirements the grantee imposes on the contractor regarding bonds. If FEMA has not made such a determination, however, then, at a minimum, FEMA requires:

- a. Each bidder must give a bid guarantee equivalent to 5% of the bid price. The "bid guarantee" shall 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 his bid, execute such contractual documents as may be required within the time specified;
- b. A performance bond posted by the contractor for 100% of the contract price. This bond is to secure fulfillment of all the contractor's obligations under the contract; and
- c. A payment bond by the contractor for 100% of the contract price. This bond assures payment, as the law requires, of all persons supplying labor and materials in the execution of the work required under the contract.



## **XV. Federal Grant Exhibits**

- EXHIBIT A: Buyer Procurement Decision Matrix
- EXHIBIT B: Federal Procurement Checklist Required Documentation
- EXHIBIT C: Acquisition Plans for Each Type of Solicitation (Maintained on Purchasing Intranet site)
- EXHIBIT D: Statement of Work (SOW) Template – Grant Administrator
- EXHIBIT E: Independent Cost Estimate – Grant Administrator
- EXHIBIT F: Piggyback Checklist
- EXHIBIT G: Sole Source Justification
- EXHIBIT H: System of Award Management (SAM) Search
- EXHIBIT I: Independent Cost Analysis – Grant Administrator
- EXHIBIT J: Price Analysis & Fair and Reasonable Price Determination – Grant Administrator
- EXHIBIT K: Federal Required Contract Terms
- EXHIBIT L: FEMA Checklist for Reviewing Procurements
- EXHIBIT M: Department of Agriculture – Dining Services Department
- EXHIBIT N: Byrd Anti-Lobbying Amendment Certification

## XVI. Definitions

**Addendum/Addenda:** A written change, addition, alteration, correction or revision to a bid, proposal or contract document. Addendum/Addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope change to the solicitation.

**Advertisement:** A formal announcement of a Solicitation usually placed in a newspaper and/or on the Internet.

**Amendment:** A written order to the contractor for Goods and Services signed by the School Board Chairman, and/or Superintendent (in accordance with signature authority), issued after the execution of a contract, authorizing a change in the work or an adjustment in the contract sum or the contract time as originally defined by the contract documents.

**Award Letter:** A letter to the successful firm(s) notifying it/them of the award of the solicitation/contract.

**Bid:** An offer submitted by a prospective vendor in response to an Invitation to Bid, issued by the Purchasing and Distribution Services Department; becomes a contract after approval by the School Board.

**Bidders List:** A computerized data base of businesses with whom the School District has done business in the past and a list of firms who have expressed interest in submitting quotes, bids and proposals to the School District.

**Blanket Purchase Order:** A purchase order issued to a vendor, for a prescribed period of time and a prescribed dollar amount, or just a prescribed dollar amount, to allow the school/department authorized on the order to secure item(s)/service(s) directly from the firm as needed at the prices, terms and conditions specified on the order.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity which has commodities and/or services available for which the School District has a requirement.

**Change Order/Contract Amendment:** A written order to the contractor signed by the School Board Chairman, and/or Superintendent (in accordance with signature authority) and the architect, issued after the execution of a construction contract, authorizing a change in the work or an adjustment in the contract sum or the contract time as originally defined by the contract documents.

**Competitive Consultants Negotiation Act (CCNA):** Under Florida Statute Chapter 287.055, all architectural, professional engineering, landscape architectural, registered surveying, and mapping services must be procured through the qualifications-only process known as the Consultants Competitive Negotiation Act (CCNA). The CCNA requires school districts to follow a qualifications-based selection process for any project in which the basic construction cost exceeds \$325,000, or, for a planning or study activity, the fee for professional services exceeds \$35,000.

**Competitive Sealed Bidding:** Preferred method for acquiring goods, services and construction for public use in which the award is made to the lowest, responsive and responsible bidder, based solely on the response to the criteria set forth in the Invitation to Bid document; does not include discussions or negotiations with bidders.

**Competitive Solicitation:** Purchasing made through the issuance of an invitation to bid, request for proposals and invitation to negotiate.

**Construction:** The process of building, altering, repairing, improving, or demolishing any public structure or building or other public improvement of any kind to any public real property owned or leased by the School District; does not include routine repair, operation or maintenance of existing real property.

**Contract:** An obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or not do something. A legally binding promise, enforceable by law. An agreement between parties with binding legal and moral force, usually exchanging goods or services for money or other considerations. The essential elements of a contract are: an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent; legality of purpose; and definiteness.

**Contract Administration:** Following the award of a contract, the management actions that must be taken to assure full compliance with all of the terms and conditions contained within the contract document, including price. Action steps that assure that the contractor is in full compliance with the entire contract. Contract administration activities include payment, monitoring of progress, inspection and acceptance, quality assurance, monitoring and surveillance, modifications, negotiations, contract closeout, and other activities.

**Contract Management:** The overarching process that a governmental agency will use to ensure that the contractor has performed in accordance with the performance standards contained within the statement of work (SOW) or the Performance Work Statement (PWS). There are six phases of the contract management process: procurement planning, solicitation planning, solicitation, source selection, contract administration, and contract close-out.

**Contractor:** Any person or firm contracting to provide commodities or services to the School District.

**Definite Quantity Contract:** A Contract to furnish a specific quantity of an item or items at a specified time.

**Design-Build:** A project that combines the design and construction of a building or structure in a single contract performed by one firm. Design-Build procedures are governed by Florida Statute 287.055, as amended, and sets forth specific criteria for obtaining design-build services. Along with other criteria, this method requires a design criteria package be prepared, sealed by a design criteria professional employed by or retained by the School District and included with the Request for Qualifications (RFQ).

**Domiciled:** The state in which a business has its principal place of business and, as it relates to corporation, the state under whose laws the corporation was formed.

**Emergency Purchase:** The immediate purchase of commodities or services caused by a sudden, unexpected turn of events beyond the control of the School District involving public health, welfare, safety, injury or loss.

**Identical (Tie) Bids:** Two or more bids that are equal in all respects as to price, quality and service.

**Invitation to Bid:** A formal document initiated by the Purchasing and Distribution Services Department soliciting bids for supplies, equipment or services, containing or incorporating by reference the specifications or scope of work and all contractual terms and conditions of the purchase. The document contains the necessary forms upon which vendors officially submit their bid response

**Invitation to Negotiate:** A competitive solicitation utilized for complex procurements; usually results in simultaneous negotiations with two or more top-ranked firms.

**Notice of Intended Decision:** A letter issued by the Purchasing and Distribution Services Department to all interested parties; the purpose is to notify them of the recommendation made by Purchasing regarding the award recommendation.

**Procurement:** For this manual, it shall mean Purchasing, or the process of qualifying, selecting and negotiating with prospective service providers.

**Professional Services (F.A.C. 6A-1.012(11)(a):** Technical, and/or unique functions performed by independent contractors whose business is the rendering of such services. This includes, without limitation, artistic services, academic program reviews, lectures by individuals, auditing services not subject to Section 218.391, F.S., legal services, including attorney ,paralegal, expert witness, court reporting, appraisal or mediator services, and health services involving examination, diagnosis, treatment, prevention, medical consultation or administration, as designated by the Purchasing Director.

**Professional Services (F.S. 287.055):** For purposes of CCNA only, professional services are services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

**Proposal:** Any offer specifically given to the School District in response to an Invitation to Bid, Request for Proposal, or Request for Statement of Qualifications.

**Protest:** There are two (2) types of 'Protests': 1) "Protest of Bid Specifications" and 2) "Protest of Award". A "Protest of Bid Specifications" is when a vendor(s) objects to the Technical Specifications. A "Protest of Award" is when a vendor(s) objects to the award methodology or the firm that the award is made to; in order to have a valid protest, the protesting firm must be materially affected.

**Purchase:** An acquisition of commodities or services obtained by purchase order, including lease, installment, lease-purchase, or outright purchase.

**Purchase Order:** A purchaser's written document to a vendor formalizing all the terms and conditions of a proposed transaction, such as a description of the requested items, delivery schedule, terms of payment, and transportation.

**Purchase Order Request:** A request to obtain material or services and authority to commit funds to cover the purchase submitted through the Oracle/PeopleSoft Purchasing – Express PO portal.

**Purchasing Director:** The Purchasing Director of the School District of Seminole County, Florida, or designee.

**Purchasing Activity:** A School District activity that includes the development of descriptions/specifications, the solicitation and selection of sources, the preparation and award of contracts for the procurement of commodities and services, the performance of post-award functions, and the administration of contracts.

**Purchasing Agent:** Any person assigned the responsibility by the Superintendent to approve purchase orders, develop competitive solicitations and contracts, administer and oversee any awarded contracts and/or to advise School District schools/departments in regard to any of their procurement/contractual needs. Commonly referred to as a Buyer.

**Quotation:** An informal purchasing process which solicits pricing information one or more sources in writing.

**Recurring Purchase:** Means making two or more purchases/charges when the user has reason to believe additional purchases/charges would be incurred by the School District within the next twelve months.

**Request for Proposal (RFP):** All documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals, a solicitation method used for requirements exceeding authorized limits when it is expected that negotiations with one or more bidders may be required with respect to any aspect of the requirements, or other factors will be considered in the selection of the contractor in addition to price, or only one source is being solicited.

**Respondent:** A business that responds to an invitation.

**Responsible Bidder:** A company, vendor, person, organization or entity who has submitted a response to a competitive solicitation and is capable in all respects to fully perform the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

**Responsive Bidder:** A company, vendor, person, organization or entity who has submitted a bid which conforms in all material respects to the requirements stated in the competitive solicitation.

**School Board:** The word School Board refers to the elected officials of the School Board of Seminole County, Florida, its duly authorized representatives, and any school, department, or unit within the School District.

**School District:** Refers to the entity, "The School Board of Seminole County, Florida".

**Services Contract:** An agreement calling for a contractor's time and effort. The furnishing of labor, time, or effort by a contractor or vendor, which may involve to a lesser degree, the delivery or supply of products.

**Single Source Purchase:** A procurement decision whereby purchases are directed to one source because of standardization, warranty, or other factors, even though other competitive sources may be available.

**Sole Source Purchase:** Only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation, such as technical qualifications, ability to deliver at a particular time, or services from a public utility. Under this definition, items that are manufactured by only one vendor but sold through dealers or distributors, are not a sole source because competition is available.

**Specification:** A description of the physical or functional characteristics, or of the nature of the supply or service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

**Superintendent:** The District School Superintendent in the School District of Seminole County, Florida.

**Term Contract:** A contract to furnish an indefinite quantity of an item(s)/service(s) during a prescribed period of time at a specific price(s).

**Vendor:** Any business firm that will be or has been awarded a contract by the School District.

**Note:** *Should there be a conflict in the above-referenced definitions, if a definition is required, or if a definition is revised, those definitions as listed in the latest version of the National Institute of Governmental Purchasing, Inc. "Dictionary of Purchasing Terms" shall be incorporated into this procedures manual.*