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740 PROCUREMENT AND NON-EMPLOYEE CONTRACTING

I. PURPOSE

The purpose of this policy is to outline the requirements for purchasing materials, products, or services.

II. GENERAL STATEMENT OF POLICY

- A. Follow a free and open competitive process in securing those products or services.
- B. Properly document purchasing activities and decisions.
- C. Observe the special rules for particular kinds of purchases typically used under the federal Charter School Program.
- D. All purchases will follow federal, state, and local statutes and regulations including specific requirements found in the Code of Federal Regulations (CFR) at 34 CFR 80.36 for governmental sub-recipients and 34 CFR 74.40-48 for sub-recipients that are non-profit organizations (e.g. CSP sub-grantees).

III. THE THREE PERMITTED PROCUREMENT METHODS

- A. **Small purchases:** procurements of \$100,000 or less in the aggregate.
- B. **Competitive Proposals:** A procurement in excess of the small purchase threshold (more than \$100,000).
- C. **Noncompetitive proposals/sole source procurement:** Noncompetitive negotiations may be utilized only under very limited circumstances. School District must show that another method of procurement was infeasible because:
 - The item or service was only available from a single source;
 - A public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or
 - Competition was determined to be inadequate after receiving proposals from numerous sources.

IV. CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISES

- A. The School District will take all necessary affirmative steps to assure that small and minority firms and women's business enterprises are used when possible. Affirmative steps include:
- Placing qualified small and minority business and women's business enterprises on solicitation lists;
 - Assuring that small and minority business and women's business enterprises are solicited whenever they are potential sources;
 - 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;
 - Establishing delivery schedules, where the requirements permits, which encourage participation by small and minority business and women's' business enterprises; and
 - Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

V. DEBARRED AND SUSPENDED PARTIES

- A. The School District must not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ``Debarment and Suspension."''

The EPLS database located at <http://www.epls.gov> is a Federal government system maintained by GSA as required by FAR Subpart 9.4 and Executive Orders 12549 and 12689.

- B. Prior to contract award financed in whole or part with federal CSP grant or other funds, the School District shall use the EPLS database to ensure proposed contractors are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549.
- C. In order to document compliance with this requirement, the School District shall file with each contract:
- Results of EPLS search; and

- Certification as part of contract from the contractors that they have not been debarred or suspended from participation in federal, state, or local programs.

VI. ADMINSTRATIVE PROCEDURES

- A. Determine procurement method based on need, cost, and source availability.
- B. Fill out “Procurement Record Form”.
- C. Small Purchases (< \$100,000):
 1. Identify and/or enumerate scope of services or standards of products.
 2. Prepare Request for Proposal (RFP) or Request for Quote (RFQ).
 - a. Purpose statement
 - b. School Information
 - c. Timeline
 - d. Scope of work or standards
 - e. Deliverables
 - f. Contract terms and conditions
 - g. Evaluation and award process
 - h. Appendices
 3. Identify and contact potential vendors (minimum 3) and/or publish RFP or RFQ.
 4. Assess proposals/quotes received based on contract award criteria (cost, quality, suitability, conformance to specifications, availability, references, best overall ability to fulfill need).
 5. Notify the award recipient in writing. Notify declined entities as well.
 6. Fill out purchase order and process through the School District’s Business Office.
 7. All purchase orders and contracts must be signed by an authorized official of the School District.
 8. Determine the adequacy of contractor performance.

9. Establish reasonable payment schedules defining amount and timing of funds to be paid (recommend payment *after* services rendered).
10. Ensure items delivered and paid for are consistent with the purchase order and/or contract for the goods or services.
11. Provide that timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized.
12. Maintain required documentation.

D. Competitive Proposals (> \$100,000):

1. May not be inappropriately broken up into smaller components solely to qualify for the less complicated procedures followed under the “small purchases” approach.
2. School District shall use competitive proposal procedures as outlined by the MN Department of Education, state, federal, and local statutes and regulations.

E. Noncompetitive proposals/sole source procurement:

1. Identify and/or enumerate scope of services or standards of products.
2. Fill out “Procurement Record Form”.
3. Prepare Request for Proposal (RFP) or Request for Quote (RFQ).
 - a. Purpose statement
 - b. School Information
 - c. Timeline
 - d. Scope of work or standards
 - e. Deliverables
 - f. Contract terms and conditions
 - g. Evaluation and award process
 - h. Appendices
4. Fill out Purchase Order and process through Business Office.
5. All purchase orders and contracts must be signed by authorized official of the School District.

6. Determine the adequacy of contractor performance.
7. Establish reasonable payment schedules defining amount and timing of funds to be paid (recommend payment *after* services rendered).
8. Insure items delivered and paid for are consistent with the purchase order and/or contract for the goods or services.
9. Provide that timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized.
10. Maintain required documentation.

F. In addition to the contract certification provision under **DEBARRED AND SUSPENDED PARTIES** above, and in accordance with 34CFR 80.36(i) and 34CFR 74.48(e), written contracts with vendors must include the following:

For CSP financed contracts (which may only be non-construction), contracts must include provisions found in 34CFR 80.36(i):

- i. Paragraph (7) Notice of awarding agency requirements and regulations pertaining to reporting;
- ii. Paragraph (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;
- iii. Paragraph (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data;
- iv. Paragraph (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
- v. Paragraph (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed; and

- vi. Paragraph (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94 163, 89 Stat. 871).
 - For CSP financed non-construction contracts of \$10,000 or more, contracts must include, in addition to above, provision found in paragraph (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement.
 - For CSP financed non-construction contracts of \$100,000 or more, contracts must include in addition to above, the following provisions found in:
 - i. Paragraph (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate; and
 - ii. Paragraph (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15); and
 - iii. Appendix A to Part 74-Contract Provisions, paragraph (8) Byrd Anti-Lobbying Amendment (31U.S. C. 1332)

VII. RECORDS TO BE MAINTAINED

- A. The School District must maintain *records to detail the significant history of a procurement*. These records include, but are not limited to documentation on:
 - The rationale for selecting the *method* of procurement used;
 - The rationale for selecting/rejecting the *contractor*;
 - The rationale for selecting the *type* of contract;
 - The basis for the *cost or price* of a contract;
 - The receipt of an adequate number of price or rate quotations from qualified sources; and
 - Justification for lack of competition when competitive bids or offers are not obtained.

Legal References: 20 U.S.C. 3474
24 CFR Sec. 80.35
34 CFR 74.40-48
34 CFR 80.36