



City of Chelsea
PURCHASING DEPARTMENT
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February 17, 2022

Updates to Procurement Policies and Procedures

Starting February 17, 2022, the City & Schools are updating some of the internal policies and procedures relating to procurement using Federal Grant funding. The intent of the policy is to codify existing policies and procedures.

Enclosed is the updated, **Federal Procurement Policy Chelsea Public Schools**.

Copies of Policies and Procedures are available electronically on the city's website:
<https://www.chelseama.gov/purchasing>.

Thanks for your help and understanding.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dragica Ivanis", is written over the printed name.

Dragica Ivanis
Chief Procurement Officer

Federal Procurement Policy Chelsea Public Schools

The District maintains the following procedures for purchases utilizing federal funds.

A. Responsibility for Purchasing

The School Business Manager oversees purchasing for the School Department in conjunction with the City's Chief Procurement Officer. Final responsibility for issuance of all purchase orders and contracts rests with the City's Purchasing Office. The School Business Manager reviews and approves all purchases and ensures that each requisition has the proper supporting documentation prior to submission to the Purchasing Office; this includes copies of quotes.

Purchases for goods or services are initiated at the building or programmatic level by the grant manager. However, all purchasing must be approved by the Purchasing Office, where the requisition is converted to a purchase order. When a contract is required, the City Manager will sign on behalf of the City and the School Department.

B. Purchase Methods

The specific purchase procedures required depend on the cost of the item(s) being purchased. In addition to Federal requirements, all recipients of grant funds must follow State and local procurement rules, which are often stricter than Federal requirements.

Chelsea Public Schools procures only those items and services that are required to perform its mission and/or fill a bona fide need. Procurements are made using best value contracting, which includes assessing quality, performance, and price. MGL, Chapter 30B, Chapter 30, 39M, Chapter 7C and Chapter 149 are followed by CPS and the City of Chelsea.

The District adheres to the following objectives:

- Procurement will be impartial and based strictly on the merits of supplier and contractor proposals and applicable related considerations such as delivery, quantity, etc.
- All purchases are made in the best interests of the District and its funding sources.
- Obtain quality supplies/services needed for delivery at the time and place required.
- Buy from responsible sources of supply.
- Obtain maximum value for all expenditures.
- Deal fairly and impartially with all vendors.
- Maintain dependable sources of supply.
- Be above suspicion of unethical behavior at all times; avoid any conflict of interest, or even the appearance of a conflict of interest in District and supplier relationships.
- Utilize City purchase orders for all purchases.
- The appropriate building principal/ program director and School Business Manager must approve purchase requisitions.

- All contracts and leases will be evidenced by a signed agreement identifying all terms and conditions.
- Any real estate agreement to rent or sell will require a beneficial interest disclosure as required in MGL Chapter 7, section 40J.

Purchases up to \$9,999 (Sound Business Practice)

Procurement of supplies and services under \$10,000.00 are governed by Massachusetts General Law, Chapter 30B. The procurement procedure for purchasing supplies and services under \$10,000 require sound business practices. This is defined as ensuring the receipts of favorable prices by periodically soliciting price lists or quotes. No formal advertising is required. The contract is awarded to the vendor offering the best price. Software licenses can only be purchased for one year at a time. A written contract is not required. A Certificate of Liability may be required for contracts and should list the City of Chelsea as additionally insured.

There are additional considerations when making purchases with Federal funds. As noted previously, Chelsea Public Schools follows whichever requirements are more restrictive. 2 CFR 200.320 provides a federal threshold for micro-purchases. Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed \$3,500. The micro-purchase method is used in order to expedite the completion of transactions and minimize the associated administrative burden and cost. In practice, the District follows MGL Chapter 30B for purchases up to \$3,500.

Purchases made with Federal funds where the amount is between \$3,500 and \$10,000 are considered Small Purchases under 2 CFR 300.320 (b): "Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources." So while price quotations are not required by MGL Ch. 30B for purchases under \$10,000, the Federal regulation suggests at least two quotes if the purchase is from Federal funds.

Purchases between \$10,000 and \$49,999 (Submit Quotes)

Procurement of supplies and services between \$10,000 and \$49,999 are governed by Massachusetts General Law, Chapter 30B, which is more restrictive than Federal guidance in this cost range. The procurement procedure for purchasing supplies and services between \$10,000 and \$49,999 requires soliciting three written quotes. Chelsea Public Schools requires a written description/terms be provided to all vendors to ensure an equitable procurement process for all vendors. No formal advertising is required, under 30B. The contract is awarded to the responsible and responsive person offering the best price. A responsible vendor is defined as a person who has the capability to perform fully the contract requirements and the integrity and reliability, which assures good faith performance. A responsive bidder is defined as a person who has submitted a bid or proposal, which conforms in all respects to the District's request. A written contract is required. A Certificate of Liability Insurance may be required for contract listing the City of Chelsea as additionally insured. A contract cannot exceed three years unless approved by the Chelsea School Committee prior to entering into the contract.

Additional Requirement for public construction (M.G.L. Chapter 30, 39M & 149) include:

- Quotes must be solicited in writing
- Posting a notice at least two weeks before responses are due in the following locations:
 - City's website
 - COMMBUYS
 - Central Register Bulletin (instead of Goods and Services Bulletin)
 - In/Near office
- Subject to the state's Prevailing Wages and Federal Davis-Bacon Wage determinations and OSHA Certification
- A payment bond in the amount of 50% of the total contract value, if the contract is worth more than \$25,000

Purchases Over \$50,000 (Sealed Bids or Proposals)

Sealed Bids: For purchases more than \$50,000, Chelsea Public Schools follow Massachusetts General Law, Chapter 30B (which is more restrictive than Federal guidance with its higher cost threshold for bids). Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. If a Request for Proposal (RFP) is used, an award is made to the most advantageous proposal from a responsible and responsive bidder taking into consideration price and non-price related factors. The sealed bid method is the preferred method for procuring construction, when the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for State, local, and tribal governments, the invitation for bids must be publically advertised;
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly; and
- A firm fixed price contract award must be made in writing to the lowest responsive and responsible bidder.

Advertising is required once in a local newspaper of general circulation (Chelsea Record) and on the City of Chelsea's website at least two weeks before bids or proposals are due. If \$100,000 or more, it is necessary to advertise at least once in the ***Goods and Services Bulletin*** published by the Massachusetts Secretary of State's Office.

Competitive Proposals: The process of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is

awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- Proposals must be solicited from an adequate number of qualified sources; and
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Massachusetts General Law, Chapter 30B has additional requirements regarding Requests for Proposal (RFP's). Below are RFP requirements:

- The Procurement Officer shall determine in writing that the selection of the most advantageous offers requires comparative judgment of factors in addition to price;
- Bidders must submit separate sealed price and non-price proposals;
- Quality requirements establish standards of acceptability for the supplies and services the District is purchasing; and
- Comparative criteria rating factors include highly advantageous, advantageous, not advantageous and unacceptable.

In addition, all Invitation for Bids (IFB's) and Request for Proposals (RFP's) require vendors submitting bids to sign and submit a signature authority certification, certificate of non-collusion, tax compliance certification, wage theft certification, living wage certification, and conflict of interest law compliance forms.

Contract/Price Analysis: The District performs a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. 2 C.F.R. § 200.323(a). A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the School Business Manager must come to an independent estimate prior to receiving bids or proposals. 2 C.F.R. § 200.323(a).

When performing a cost analysis, the School Business Manager negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. 2 C.F.R. § 200.323(b).

Additional Requirement for public construction (M.G.L. Chapter 30, 39M & 149) include:

- Posting a notice at least two weeks before responses are due in the following locations:
 - City's website
 - COMMBUYS
 - Central Register Bulletin (instead of Goods and Services Bulletin)

- In/Near office
- Subject to the state's Prevailing Wages and Federal Davis-Bacon Wage determinations
- A payment bond in the amount of 50% of the total contract value, if contract value is between \$50,000 to \$150,000
- A payment bond and performance bond in the amount of 100% of the total contract value, if contract value is over \$150,000
- A 5% bid bond
- Division of Capital Asset Management and Maintenance (DCAMM) Certification, if more than \$150,000
 - Filed sub-bidding if the sub trade is more than \$25,000
- OSHA Certification

Noncompetitive Proposals (Sole Sourcing)

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

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

Under M.G. L. Chapter 30B, a sole source procurement of any supply or service under \$50,000 is allowable when a reasonable investigation shows that there is only practicable source for the required supply or service.

Sole source procurements must include a memo that details the basis for determining that there was only one practical course for the purchase. This is an area where local procedures may be more restrictive than State or Federal requirements. Sole source procurements are not common in the Chelsea Public Schools.

C. Full and Open Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

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

- Specifying only a “brand name” product instead of allowing an “equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

Education Department General Administrative Regulations, EDGAR, further requires the following to ensure adequate competition:

Geographical Preferences Prohibited

On Federal grants, the District must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. Leasing of space may involve geographic preferences but may not be charged to Federal funds unless specifically authorized by the Federal awarding authority.

Solicitation Language

The District must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features, which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. 2 C.F.R § 200.319(c).

D. Federal Procurement System Standards

Avoiding Acquisition of Unnecessary or Duplicative Items

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

These considerations are given as part of the process to determine the allow ability of each purchase made with Federal funds.

Use of Intergovernmental Agreements

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

Statewide contract satisfy federal competition requirements.

Use of Federal Excess and Surplus Property

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

Debarment and Suspension

The District awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The District may not subcontract with or award sub-grants to any person or company who is debarred or suspended. For all contractors with a potential cost of \$25,000 or more the District verifies that the proposed vendor is not excluded or disqualified. 2 C.F.R. Part 200, Appendix II (1) and 2 C.F.R. §§ 180.220 and 180.300.

Chelsea Public Schools verifies that potential vendors have not been suspended or debarred. Prior to approving requisitions for contracted services costing \$25,000.00 and funded by a Federal grant, grant finance staff will refer to the excluded party list on SAM.gov. (<https://sam.gov/content/home>) In addition, vendor contracts may require the vendor to certify that they have not been suspended or debarred.

Maintenance of Procurement Records

The District must maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price, and verification that the contractor is not suspended or debarred. *How long do they need to be retained? Should we state the retention time?*

Time and Materials Contracts

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

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

Settlements of Issues Arising Out of Procurements

The District, in collaboration with the Procurement Department, is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and

administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the District of any contractual responsibilities under its contracts. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

Protest Procedures to Resolve Dispute

The District maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency. Contract disputes arise from the belief the procurement process was not conducted properly. A vendor has three (3) options to seek a remedy:

- Contact the local jurisdiction;
- Contact the State agency in charge of enforcing the law (i.e., the Inspector General's Office for a Chapter 30B contract) and/or
- Superior Court.

If a vendor contacts the District with a complaint regarding a procurement or award of contract, the complaint should be forwarded to the School Business Manager, who will offer to meet with the vendor. The meeting should seek all information as to the complaint of the vendor. Once the meeting has concluded and the concerns reviewed, the School Business Manager will provide recommendations to the Director of Administration and Finance. If there is a potential error in the way the procurement was conducted, or if the District seeks advice on correcting the error, the District will ask the City's Purchasing Office to seek the advice of the applicable State agency. If the vendor files a complaint in Superior Court, the District and most likely the City will seek the advice of legal counsel.

E. Conflict of Interest Requirements

Standards of Conduct

In accordance with 2 C.F.R. §200.18(c)(1), the District maintains the following standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, unless the gift is an unsolicited item of nominal value. Massachusetts General Law, Chapter 268A, governs the State's Conflict of Interest Law. There are three main provisions of the law:

- Public employees are prohibited from seeking or accepting anything of substantial value for or because of their official acts or any act within their official responsibilities.

- Public employees are prohibited from using or attempting to use their position to obtain for themselves or others unwarranted privileges of substantial value that are not properly available to similarly situated individuals.
- The Conflict of Interest Law requires public employees to disclose to their appointing authority the gift and their relationship to the giver.

The Massachusetts State Ethics Commission interprets the Conflict of Interest Law and publishes advisories. The Ethics Commission interprets substantial value to mean anything with a value of \$50 or more. Gifts of less than \$50 that may have the appearance of a conflict of interest should be disclosed. Disclosures should be made in writing and given to the appointing authority.

Massachusetts defines “immediate family” as spouse, parent, brother, sister, child or a spouse of your parent, brother, sister or child. The Financial Disclosure Law, which, like the Conflict of Interest Law, is interpreted and enforced civilly by the State Ethics Commission. Chapter 268B, of the Massachusetts General Law is the Financial Disclosure Law. This statute requires public officials, political candidates and certain public employees to disclose their and their immediate family member’s private business associations and other financial interest on their Statement of Financial Interests of SFI’s. The law covers all elected State and county officials and candidates for these positions as well as all State and county employees who are designated as holding major policymaking positions.

Every municipal employee (with few exceptions) must complete the Ethic Commissions online training program once every two years. New employees must complete the online training program within 30 days of becoming such an employee and once every two years thereafter.

Policy signed and adopted, February 16, 2022.

Thomas G. Ambrosino, City Manager