

Second Reading December 15, 2020

FILE CODE 3542.3 PROCUREMENT PROCEDURES FOR CHILD NUTRITION PROGRAMS

_____ **Monitored**

_____ **Mandated**

_____ **Other Reasons**

The Linden Public School District intentionally seeks to prohibit conflicts of interest in all procurement of goods and services.

All procurements must maximize full and open competition. The school business administrator shall ensure that source documentation shall be available to determine open competition, the reasonableness, the allow-ability, and the allocation of costs.

General Procurement

The procurement procedures will maximize full and open competition, transparency in transactions, comparability, and documentation of all procurement activities. The district plan for procuring items for use in the school nutrition program is as follows:

A. The School Business Administrator/Board Secretary will ensure all purchases will be in accordance with the Federal Funds Procurement method Selection Chart – (State Agency Form #358). Formal procurement procedures will be used as required by 2 CFR 200.318-.326 and any State and local procurement code and regulations. Informal procurement procedures (small purchase) will be required for purchases under the most restrictive small purchase threshold.

B. The following procedures will be used for all purchases:

Product/Services	“Estimated”	Procurement	Evaluation	Contract
	Dollar Amount	Method		Award Type
Small Wares	Up to \$6,000.00	Informal bid/quotes	Reasonable Price	Equitable Distribution
Small Wares	Over \$6,000.00	Informal bid/quotes	Bottom Line	Fixed Price
Repair Services	Up to \$6,000.00	Informal bid/quotes	Bottom Line	Fixed Price
Capital Equipment	Up to \$40,000.00	Informal bid/quotes	Bottom Line	Fixed Price

Capital Equipment	Over \$40,000.00	Formal IFB	Bottom Line	Fixed Price
Shortages / Emergency FSMC Services	Up to \$6,000.00	Micro- Purchase Formal RFP	Reasonable Price Criteria as Specified in RFP	Equitable Distribution As specified in RFP

Micro-Purchases:

Purchases of supplies or services, as defined by as defined by 2 CFR 200.67, will be awarded without soliciting competitive price quotations if the price is reasonable in accordance with N.J.S.A.18A:18A-37(a) below thresholds established by the State Treasurer for informal receipt of quotations. Purchases will be distributed equitably among qualified suppliers with reasonable prices. Records will be kept for micro-purchases.

Formal Procurement

When a formal procurement method is required, the following competitive sealed bid or an Invitation for Bid (IFB) or competitive proposal in the form of a Request for Proposal (RFP) procedures will apply:

A. An announcement of an IFB or a RFP will be placed on the district website and the local newspapers. The business administrator may also use other media outlets, including internet, to publicize the intent of the Linden Public School District to purchase needed items. The advertisement for bids/proposals or legal notice will be run for ten (10) days.

B. An advertisement is required for all purchases over the district's small purchase threshold of \$6,000.00. The announcement (advertisement or legal notice) will contain the:

1. General description of items to be purchased;
2. Deadline for submission of questions and the date written responses will be provided, including addenda to bid specifications, terms, and conditions as needed;
3. Date of pre-bid meeting, if provided, and if attendance is a requirement for bid award;
4. Deadline for submission of sealed bids or proposals; and

5. Address of location where complete specifications and bid forms may be obtained.

C. In an IFB or RFP, each vendor will be given an opportunity to bid on the same specifications.

D. The developer of written specifications or descriptions for procurements will be prohibited from submitting bids or proposals for such products or services.

E. The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the procurement document:

1. Contract period for base year and renewals as permitted;
2. A statement that Linden Public School District is responsible for all contracts awarded;
3. Date, time, and location of IFB/RFP opening;
4. How vendor is to be informed of bid acceptance or rejection;
5. Delivery schedule;
6. Requirements (terms and conditions) that bidder must fulfill in order for bid to be evaluated;
7. Benefits to which the district will be entitled if the contractor cannot or will not perform as required;
8. Statement assuring positive efforts will be made to involve minority and small business, women's business enterprises and labor surplus area firms;
9. Statement regarding the return of purchase incentives, discounts, rebates, and credits under a cost reimbursement FSMC contract to the district's non-profit school food service account;
10. Contract provisions as required in Appendix II to 2 CFR 200:
 - Termination for cause and convenience – contracts in excess of \$10,000
 - Equal Opportunity Employment – “federally assisted construction contracts”;
 - Davis-Bacon Act – construction contracts in excess of \$2,000
 - Contract work Hours and Safety Standards – contracts in excess of \$100,000;

- Right to inventions made under a contract or agreement – if the contract meets the definition of a “funding agreement” under 37 CFR 401.2(a);
- Clean Air Act – contracts in excess of \$150,000;
- Debarment and Suspension – all federal awarded contracts, and
- Byrd Anti-Lobbying Amendment – contracts in excess of \$100,000
- Contracts must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate

11. Contract provisions as required in 7 CFR 210.21(f) for all cost reimbursable contracts;

12. Contract provisions as required in 7 CFR 210.16(a)(1-10) and 7 CFR 250.53 for food service management company contracts;

13. Procuring instrument to be used are purchase orders from firm fixed prices after formal bidding;

14. Price Adjustment Clause for renewal of multi-year contracts as defined in N.J.S.A. 18 A: 18A – 42 is tied to the requirements specified in N.J.S.A – 18A:18A – 2: Definitions. The Index Rate means the annual percentage increase rounded to the nearest half percent in the IMPLICIT PRICE DEFLATOR FOR STATE & LOCAL GOVERNMENT PURCHASES OF GOODS & SERVICES computed and published quarterly by the U.S. Department of Commerce, bureau of Economic Analysis.

15. Method of evaluation and type of contract to be awarded (solicitations using an IFB are awarded to the lowest responsive and responsible bidder; solicitations using a RFP are awarded to the most advantageous bidder/offer or with price as the primary factor among factors considered);

16. Method of award announcement and effective date (if intent to award is required by state or local procurement requirements);

17. Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received;

18. Provision requiring access by duly authorized representatives of the district, New Jersey Department of Agriculture, United State Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts;

19. Method of shipment or delivery upon contract award;

20. Provision requiring contractor to maintain all required records for three years after final payment and all other pending matters (audits) are closed for all negotiated contracts

21. Description of process for enabling vendors to receive or pick up orders upon contract award;

22. Provision requiring the contractor to recognize mandatory standards/policies related to energy efficiency contained in the Energy Policy and Conservation Act (PL 94-163);

23. Signed statement of non-collusion;

24. Signed Debarment/Suspension Certificate, clause in the contract or a copy of search results from the System for Award Management (SAM);

25. Provision requiring "Buy American" as outlined in 7 CFR Part 210.21(d) and SP 242016; including specific instructions for prior approval and documentation of utilization of nondomestic food products only ;

26. Specifications and estimated quantities of products and services prepared by the district and provided to potential contractors desiring to submit bids/proposals for the products or services requested. And

27. The district's Electronic Signature Policy (see New Jersey Uniform Electronic Signature Transaction act, N.J.S.A. 12A:12-1 et seq. <https://www.njleg.state.nj.us/2000?Bills/PL01/116.PDF>)

F. If any potential vendor is in doubt as to the true meaning of specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the school business administrator or his or her designee and will specify the deadline for all questions.

1. The school business administrator or his or her designee will be responsible for securing all bids or proposals;

2. The school business administrator or his or her designee will be responsible to ensure all district procurements are conducted in compliance with applicable federal, state, and local procurement regulations;

3. The following criteria will be used in awarding contracts as a result of bids/proposals. Price must be the highest weighted criteria:

a. Price;

b. Quality of products and produce;

- c. Evidence of proven and exemplary service and delivery; and
- d. Availability.

G. In awarding a RFP, a set of award criteria in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid document materials. Price alone is not the sole basis for award, but remains the primary consideration among all factors when awarding a contract. Following evaluation and negotiations, a firm fixed price or cost reimbursable contract shall be awarded:

1. The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and is most advantageous to the district, price as the primary and other factors considered. Any and all bids or proposals may be rejected in accordance with the law;
2. The school business administrator is required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections;
3. The school business administrator shall review the procurement system to ensure compliance with applicable laws;
4. The school business administrator or his or her designee shall be responsible for documentation the actual product specified is received;
5. Any time an accepted item is not available, the school business administrator or his or her designee will select the acceptable alternate. The contractor must inform the school business administrator or his or her designee immediately, but no longer than 48 hours, if a product is not available. In the event a nondomestic agricultural product is to be provided to the district, the contractor must obtain, in advance, written approval for the product. The school business administrator must comply with the Buy American Provision;
6. The school business administrator shall ensure that full documentation regarding the reason an accepted item was unavailable, and the procedure used in determining acceptable alternates, will be available for audit and review;
7. The school business administrator is responsible for maintaining all procurement documentation.

H . Formal bid procedures will be applied on the basis of (*check all that apply*):

- Centralized system

- Individual school
- Multi-school system
- State contract
- Combination of above (specify):

I. Because of the potential for purchasing more than public or non-public informal/small purchase threshold amount, or the district approved threshold if less, it will be the responsibility of the school business administrator to document the amounts to be purchased so the correct method of procurement will be followed.

Small Purchase Procedures

If the amount of purchases for items is less than the district's small purchase threshold, the following small purchase procedures, including quotes, will be used. Quotes from an adequate number of qualified sources will be required.

- A. Written specifications will be prepared and provided to the vendor.
- B. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of two vendors shall be contacted.
- C. The school business administrator or his or her designee will be responsible for contacting potential vendors when price quotes are needed.
- D. The price quotes will receive appropriate confidentiality before award.
- E. Quotes will be awarded by school business administrator upon the approval of the board. Quotes will be awarded to the lowest and best quote based upon price, quality, service, delivery, availability, and other criteria as detained in the ISP or RFP.
- F. The school business administrator or his or her designee will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications.
- G. The school business administrator or his or her designee will be responsible for documentation that the actual product specified is received.
- H. Any time an accepted item is not available, the school business administrator or his or her designee will select the acceptable alternate. Full documentation will be made available as to the selection of the acceptable item.

I. Bids will be awarded on the following criteria. Price must be the highest weighted criteria. Examples of other possible criteria include quality, service, delivery, and availability.

1. Price;
2. Quality of products and produce;
3. Evidence of proven and exemplary service and delivery; and
4. Availability.

J. The school business administrator shall be required to sign all quote tabulations, signifying a review and approval of the selections.

Noncompetitive Proposal Procedures

A. If items are available **only** from a single source when the award of a contract is not feasible under small purchase, sealed bid or competitive negotiation, noncompetitive proposal procedures will be used:

B. Written specifications will be prepared and provided to the vendor.

C. The school business administrator or his or her designee will be responsible for the documentation of records to fully explain the decision to use the noncompetitive proposal. The records will be available for audit and review.

D. The school business administrator or his or her designee will be responsible for documentation that the actual product or service specified was received.

E. The school business administrator or his or her designee will be responsible for reviewing the procedures to be certain all requirements for using single source or noncompetitive proposals are met.

F. Noncompetitive proposals shall be used for one-time purchases of a new food item if the amount is less than the applicable federal or State micro-purchase threshold to determine food acceptance by students and provide samples for testing purposes. A record of noncompetitive negotiation purchase shall be maintained by the school business administrator. At a minimum, the record of noncompetitive purchases shall include:

1. Item name;
2. Dollar amount;
3. Vendor; and

4. Reason for noncompetitive procurement.

G. The board of education or governing board will approve, in advance, all procurements that result from noncompetitive negotiations according to board policy 3320 Purchasing Procedures and the district's standard operating procedures for business (SOP).

Miscellaneous Provisions

New product evaluation procedures will include (e.g., evaluation of product labels, student taste-tests):

- A. The school business administrator shall review each transaction.
- B. Payment will be made to the vendor when the contract has been met and verified and has met the standards established according to board policy 3320 Purchasing Procedures and the district's standard operating procedures for business (SOP). (If prompt payment is made, discounts, etc., may be accepted.)
- C. Specifications will be updated as need.
- D. If product is not as specified, the following procedure will take place (e.g., remove product from service, contact vendor for approved alternate product, remove product from bid).

Emergency or Pressing Need Purchases

If it is necessary to make a one-time emergency procurement to continue service or obtain goods, the purchase must be authorized using a purchase order signed by the school business administrator. The following emergency procedures shall apply:

- A. All emergency procurements shall be approved by the school business administrator.
- B. At a minimum, the following emergency procurement procedures shall be documented:
 - 1. Item name;
 - 2. Dollar amount;
 - 3. Vendor; and
 - 4. Reason for emergency.

C. If it is necessary, in the course of a pressing need, to make an emergency purchase by means of “piggybacking” on the bid of another district, the following conditions must exist and approved procedures must be followed and appropriately documented as follows:

- 1. The school business administrator originating the competitive procurement must have a “piggyback provision” in the original solicitation;**
- 2. Documentation of the emergency requiring the piggybacking must be maintained;**
- 3. Approval from the board will be obtained and documented;**
- 4. Approval from the school business administrator that originated the competitive procurement will be obtained and documented;**
- 5. Approval from the vendor that was awarded the contract (original solicitation) will be obtained and documented;**
- 6. Approval to piggyback will be obtained and documented from the governing board during a regularly scheduled meeting following the public notice;**
- 7. Notification to the vendor of final approval will be documented and issued; and**
- 8. A contract with the vendor will be developed. The contractor shall agree to retain all books, records, and other documents relative to the contract agreement for three (3) years after final payment, or until audited by the board, whichever is sooner. The board, its authorized agents, and/or state and/or USDA auditors shall have full access to and the right to examine any of said materials during said period.**

D. Purchasing Goods and Services – Cooperative Agreements, Agents and Third-Party Services (Piggybacking)

- 1. When participating in intergovernmental and inter-agency agreements the SFA will ensure that competitive procurements are conducted in accordance with 2 CFR Part 200.318-.326 and applicable program regulations and guidance.**
- 2. When utilizing the services of a co-op, agent or third party, the SFA will ensure that the following conditions have been met and considered as one source of pricing in addition to other prices:**

- All procurements were subject to full and open competition and were made in accordance with Federal/State/Local procurement requirements;
- The existing contract allows for the inclusion of additional SFAs/members that were not contemplated in the original procurement to purchase the same supplies/equipment through the original award;
- The specifications in the existing contract meets their needs and that the items being ordered are in the contract;
- The awarded contract requires all the federally required certification; e.g. Buy American, debarment, restrictions on lobbying, etc.
- The agency will confirm the addition of their purchasing power (goods or services) to the procurement in scope or services does not create a material change, resulting in the needs to re-bid the contract;
- Administrative costs (fees) for participating in the agreement are adequately defined, necessary and reasonable and the method of allocating the cost to the participating agencies must be specified
- The Buy American provisions are included in the procurement of food and agricultural products.
- The agreement includes the basis for and method of allocating each discount, rebate or credit and how they will be returned to each participating agency when utilizing a cost-reimbursable contract.

E. The school business administrator or his or her designee shall retain all books, records, and other documents relative to the award of the contract for three (3) years after final payment. If there are audit findings that have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit. Specifically, the school business administrator or his or her designee shall maintain, at a minimum, the following documents:

1. Written rationale for the method of procurement;
2. A copy of the original solicitation;
3. The selection of contract type;
4. The bidding and negotiation history and working papers;
5. The basis for contractor selection;
6. Approval from the state agency to support a lack of competition when competitive bids or offers are not obtained;

7. The basis for award cost or price;
8. The terms and conditions of the contract;
9. Any changes to the contract and negotiation history;
10. Billing and payment records;
11. A history of any contractor claims; and
12. A history of any contractor breaches.

Implementation

This procurement policy will be implemented beginning the 2018/2019 school year and reviewed regularly and revised as necessary for compliance with changes in law or changes in district practices.

Date: October 18, 2018

Legal References: Use legal reference sheet.

Key Words

School Lunch, Food Service, Nutrition, Wellness

Linden Public Schools