

## **Model Procurement Code Purchasing**

### **AUTHORITY**

The Kentucky Model Procurement Code contains specific provisions in [KRS 45A.345](#) to 45A.460 that may be adopted by local public agencies, including local boards of education. The Board has adopted the local public agency provisions of the Code. [KRS 45A.343](#) provides that no other statutes governing purchasing shall apply to the local public agency upon adoption of these provisions. The Board has adopted procurement regulations, not inconsistent with the local public agency provisions, as permitted by [KRS 45A.360](#). The Superintendent shall develop procedures for the implementation of the local public agency provisions of the Code and the Board's procurement regulations.

### **GENERAL PURCHASING REQUIREMENTS**

All contracts and purchases shall comply with the local public agency provisions of the Code and the Board's procurement regulations. All contracts and purchases shall be made through competitive sealed bidding<sup>1</sup> or competitive negotiation, both of which may include the use of a reverse auction, unless the purchase or contract satisfies the requirements for noncompetitive negotiation or small purchases.

### **SMALL PURCHASES**

District small purchase procedures may be used for any contract in which the aggregate amount does not exceed \$30,000.<sup>4</sup>

### **SUPERINTENDENT TO APPROVE PURCHASES**

The Board shall authorize the Superintendent to approve purchases, in accordance with small purchase procedures adopted by the Board, for any contract for which a determination is made that the aggregate amount of the contract does not exceed twenty thousand dollars (\$20,000) and require the Superintendent to provide a quarterly report to the Board on any purchases made under this provision.<sup>5</sup>

### **IDENTIFYING FORMER BUSINESS NAMES**

All contractors submitting bids on any District construction project over twenty thousand dollars (\$20,000) shall submit a list identifying all former business names under which the contractor had operated in the past five years.

### **TRAINING AND APPRENTICESHIP PROGRAMS**

The Board supports the development and use of training and apprenticeship programs by bidders and their subcontractors to improve the skills of their employees and the quality of workmanship on District construction projects.

The District shall develop and implement purchasing procedures, in accordance with the Kentucky Model Procurement Code (KRS 45A.345 to 45A.460); KRS Chapters 136, 139, 141, 337, 338, 341, and 342; related administrative regulations; and other pertinent state and federal laws, that actively promote increasing training and apprenticeship programs. The Superintendent will develop procedures that, to the extent permitted by law, recognize a contractor's participation in an apprenticeship or training program applicable to the craft to be performed on a project to be one of the criteria considered.

## **Model Procurement Code Purchasing**

### **PURCHASING FROM MINORITY, WOMEN, AND VETERAN-OWNED ENTERPRISES**

The Board supports the purchase of goods; construction, renovation and repair services; and other services from minority, women, and veteran business enterprises (M/W/VBE) by the District.

The District shall develop and implement purchasing procedures, in accordance with the Kentucky Model Procurement Code ([KRS 45A.345](#) to 45A.460); [KRS Chapters 136, 139, 141, 337, 338, 341, and 342](#); ~~and~~ related administrative regulations; and other pertinent state and federal laws, that actively promote increasing opportunities for M/W/VBE to become vendors providing goods and services to the District.

This policy and related procedures shall establish expectations of good faith efforts by prospective vendors for M/W/VBE participation and include mechanisms to document and measure those efforts.

### **LEADERSHIP**

District leadership shall take an active role to ensure effective implementation of this policy. The Superintendent, Chief Operations Officer, Chief Financial Officer, and Chief Equity Officer ~~and Coordinator Minority Enterprise~~ shall:

1. Review the results of the performance of the District's implementation of this policy with internal management personnel on a periodic basis;
2. Articulate in written and verbal communication, internally and externally, the District's interest in achieving the goal of increasing opportunities for M/W/VBE participation with District procurement;
3. Issue periodic reports to the Board and to other internal and external stakeholders; and
4. Engage in other leadership activities contributing to increasing the utilization and meeting of M/W/VBE goals of this policy.

### **ADMINISTRATION**

The Purchasing Department and Facility Planning Department shall incorporate procedures established under this policy as part of their financial and management responsibilities over District procurement processes. The Chief Equity Officer ~~/designee and the Coordinator Minority Enterprise~~ shall be responsible for supporting effective implementation of this policy.

### **DEFINITIONS**

As used in this policy:

**Construction, renovation, and repair services** means the erection, construction, alteration, or repair of District facilities.

**Goods** means supplies, materials, and equipment.

**Other services** means services procured by District that are not construction, renovation, and repair services.

**Minority Business Enterprise (MBE)** means a business that is certified as being at least fifty-one percent (51%) controlled by one (1) or more racial/ethnic minority persons of either sex. A

**Model Procurement Code Purchasing**

racial/ethnic minority person shall be described as follows: Black or African American, Asian, American Indian and Alaska Native, Native Hawaiian and Other Pacific Islander, Hispanic or Latino.

**Woman Business Enterprise (WBE)** means a business that is certified as being at least fifty-one percent (51%) controlled by one or more non-minority women.

**Veteran Business Enterprise (VBE)** means a small business that is certified as being at least fifty-one percent (51%) controlled by one (1) or more veterans, and that has one or more veterans managing day-to-day operations and also making long-term decisions.

**M/WBE** means a minority and women business enterprise.

**M/W/VBE** means a minority, women and veteran-business enterprise.

**CERTIFICATION OF M/W/VBE**

M/W/VBE are certified and classified by a variety of entities. The District shall accept M/W/VBE certification from any bona fide certifying entity, including, but not limited to Louisville Metro Government, the Kentucky Finance and Administration Cabinet, Tri-State Minority Supplier Development Council, and the National Women's Business Enterprise Council. Additionally, District staff may classify businesses that are not certified by the above entities if a business demonstrates that it meets the certifying entities' definition of an M/W/VBE.

**SUPPORT FOR M/W/VBE VENDOR UTILIZATION**

The District shall maintain a master database of MBE, WBE, and VBE vendors, and establish procedures for its use, to assist District staff responsible for bidding and purchase process in meeting good faith effort requirements.

The District shall establish an ongoing outreach effort to M/W/VBE vendors, including, but not limited to providing information and guidance regarding doing business with the District, assisting vendors with the District's e-procurement system. The District shall establish and maintain partnerships with existing management and technical assistance providers to assist M/W/VBE in securing and meeting performance expectation for District contracts.

**M/W/VBE GOALS AND GOOD FAITH EFFORT**

**For Construction, Renovation, and Repair Services Projects**, the District's goals are as follows:

1. Fifteen percent (15%) MBE participation;
2. Ten percent (10%) WBE participation; and
3. VBE participation at a rate established by the Chief Equity Officer and the Chief Financial Officer based on research of best practices of peer school districts and other governmental entities.

Bidders who utilize subcontractors shall make good faith efforts to meet the District's M/W/VBE goals for subcontractors used for each project on which they bid. Bidders who do not meet the goals shall submit documentation of their good faith efforts in soliciting pricing, as set forth in the District's procedures for bidders. Award of contract shall be conditional upon the bidder's satisfaction of these requirements.

## **Model Procurement Code Purchasing**

### **PURCHASE OF GOODS AND OTHER SERVICES**

District staff shall make good faith efforts to utilize M/W/VBE vendors in accordance with standards and documentation requirements set forth in District purchasing procedures. At a minimum, District staff responsible for soliciting three price quotes for non-bid items shall make a good faith effort to include at least one M/W/VBE vendor per bid, identified utilizing the master database maintained by the [Chief Equity Officer/designee](#)~~Coordinator Minority Enterprise~~ and other means.

### **DETERMINATION OF ANNUAL GOALS**

Each year, the [Chief Equity officer/designee shall](#) ~~Coordinator Minority Enterprise~~ establish a goal-setting work group to set aspirational goals for M/W/VBE utilization the next fiscal year in the following categories:

1. Construction;
2. Architecture and Engineering;
3. Professional Services;
4. Goods; and
5. Other Services.

### **DOCUMENTATION, REPORTING, AND EVALUATION**

The [Chief Equity Officer/designee](#) ~~Coordinator Minority Enterprise~~ shall establish procedures for the collection, maintenance, and tracking of records at the District, division, department and school level relating to implementation of this policy to include, but not be limited to:

1. Documentation of compliance with the good faith effort requirements including periodic site visits; and
2. Statistics regarding the utilization of M/W/VBE by District Divisions, Departments, and Schools.

The Chief Equity Officer shall:

1. Submit quarterly written reports to the Board regarding the implementation of this policy; and
2. Conduct periodic formal evaluations of the effectiveness of the M/W/VBE program.

### **ETHICAL STANDARDS**

To avoid conflicts that may arise during the decision-making process for procurement of services and products for the District, employees shall adhere to the ethical standards set out in [KRS 45A.455](#) and the Board's procurement regulations.

### **REPORTING AND CONSEQUENCES OF STATUTORY VIOLATIONS BY CONTRACTORS**

In accordance with KRS 45A.343, the District shall establish procedures to require a contractor and all subcontractors performing work under a contract to:

1. Reveal any final determination of a violation within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342, relating to corporate,

### **Model Procurement Code Purchasing**

sales, use, and income taxes; wages and hours, OSHA violations; unemployment compensation; and workers' compensation; and

2. Be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 for the duration of the contract.

A contractor's failure to reveal a final determination of a violation or to comply with these statutes for the duration of the contract shall be grounds for:

1. Cancellation of the contract; and
2. Disqualification of the contractor from eligibility for future contracts for a period of two (2) years.

#### **BIDDER'S STATEMENT ON STAFFING CAPABILITIES**

The District shall establish procedures requiring a signed assurance from a bidder that labor under its direction as a self-performing contractor, or skilled labor provided by any subcontractor, will be paid as employees with appropriate withholdings and benefits.

#### **PROCEDURES SETTING FORTH ADDITIONAL REQUIREMENTS FOR BIDDERS**

The Chief Financial Officer shall establish procedures for the following:

1. A written plan for employee drug testing that covers all employees of the bidder who will perform work on a District project;
2. Receipt of the name and management experience of each bidder's project managers and superintendents that the bidder intends to assign to work on a District project;
3. Proof of any professional or trade license required by state law for any trade or specialty area required for a project being bid;
4. Disclosure of any suspension or revocation of a professional or trade license of the bidding company or person employed by the bidding company;
5. Evidence that the bidder has a bond issued by a surety authorized to do business in Kentucky, as required by administrative regulations promulgated by the Kentucky Board of Education;
6. Post-bid submissions from a bidder within seventy-two (72) hours after bids are due disclosing the name, address, and type of work of each first-tier subcontractor, including individuals serving independent contractors; and
7. Receipt of a written assurance from a bidder that payroll documents indicating proper tax withholding for it and all subcontractors under the bidder shall be available for inspection upon request by Superintendent /Designee;

#### **FEDERAL AWARDS/CONFLICT OF INTEREST**

No employee, officer, or agent of the District 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.<sup>3</sup>

## **Model Procurement Code Purchasing**

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. In determining whether an activity constitutes an impermissible acceptance of a gratuity or item of monetary value, “gratuity” means a payment, loan, subscription, advance, deposit of money, services, or anything of more than twenty-five dollars (\$25.00) in value, present or promised, unless consideration of substantially equal or greater value is received. Violation of these standards may result in disciplinary action including, but not limited to, suspension, dismissal, or removal.

~~For all contracts funded in whole or in part by the District, the Board shall apply the reciprocal preference for resident bidders required by law. Geographical preferences relating to school nutrition service purchases may be utilized only as permitted by applicable federal law.<sup>2</sup>~~

### **RECIPROCAL PREFERENCE FOR RESIDENT BIDDERS**

~~A public purpose is served by providing a preference to Kentucky residents in contracts by the Board. To the extent permitted by law, the Chief Finance Officer shall adopt procedures for all contracts funded or controlled by the Board to implement a preference for a Kentucky resident bidder against a non-resident bidder that is equal to the preference given or required by the state of the non-resident bidder. Geographical preferences relating to school nutrition service purchases may be utilized only as permitted by applicable federal law.<sup>2</sup>~~

### **USE OF NON-RESIDENT SUBCONTRACTORS**

~~A bidder that is awarded a contract for a construction, renovation, or repair services project that utilizes subcontractors shall make an effort to subcontract with resident businesses of the Commonwealth. Bidders that utilize s subcontractors based outside of Kentucky shall submit documentation of their efforts to solicit pricing from subcontractors based in the Commonwealth.~~

### **EXEMPTIONS**

Federal regulatory requirements do not provide a bidding exception for purchase of perishables using school nutrition service funds. Such purchase must follow applicable federal regulations.<sup>3</sup>

### **BACKGROUND CHECKS**

The Superintendent may require an adult who is permitted access to school grounds on a regularly scheduled and continuing basis pursuant to a written agreement for the purpose of providing services directly to a student or students as part of a school-sponsored program or activity to submit, at no expense to the District, to a national and state criminal history background check by the Kentucky State Police and the Federal Bureau of Investigation and to provide a clear CA/N check, defined in [KRS 160.380](#) as “a letter from the Cabinet for Health & Family Services indicating that there are no substantiated findings of child abuse or neglect relating to a specific individual.”<sup>6</sup>

Link to DPP-156 Central Registry Check and more information on the required CA/N check:

<http://manuals.sp.chfs.ky.gov/chapter30/33/Pages/3013RequestfromthePublicforCANChecksandCentralRegistryChecks.aspx>

### **OPEN RECORDS**

~~All information submitted by a bidder or a subcontractor pursuant to a bid specification are public records subject to review pursuant to the Open Records Act as set forth in KRS 61.870 to KRS 61.884.~~

**Model Procurement Code Purchasing**

**REFERENCES:**

<sup>1</sup>Includes the State Bid List

<sup>2</sup>[KRS 160.303](#); [200 KAR 005:400](#); [KRS 45A.494](#)

<sup>3</sup>2 C.F.R. 200.318

<sup>4</sup>[KRS 45A.385](#);

<sup>5</sup>[KRS 160.370](#)

<sup>6</sup>[KRS 160.380](#)

[KRS 156.076](#); [KRS 160.290](#)

[KRS 45A.070](#); [KRS 45A.343](#); [KRS 45A.345](#); [KRS 45A.352](#); [KRS 45A.360](#); [KRS 45A.370](#)

[KRS 45A.380](#); [KRS 45A.420](#); [KRS 45A.445](#); [KRS 45A.455](#)

[KRS 45A.460](#); [KRS 45A.620](#)

[KRS 65.027](#); [KRS 160.151](#); [KRS 162.070](#); [KRS 164A.575](#); [KRS 176.080](#)

[OAG 79-501](#); [OAG 82-170](#); [OAG 82-407](#)

Kentucky Educational Technology Systems (KETS)

**RELATED POLICIES:**

05.1; 06.4; 07.13

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