# Draft 4/19/2024

# FISCAL MANAGEMENT I04.32 AP.1

Procurement

1. Conditions, including emergencies, and procedures under which purchases may be made by means other than competitive sealed bids.

Purchasing officers are authorized to acquire goods, services, or construction through non-competitive negotiation under the following circumstances providing a written determination is made that competitive bidding is not feasible. If available, quotes from three suppliers shall be secured. At least one (1) of the following conditions shall be met:

* 1. An emergency has been determined.

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, and equipment failures. The existence of such a condition creates an immediate and serious need to supplies, services, or construction that cannot be met through normal procurement procedures and the lack of which would seriously threaten (a) the functioning of the District; (b) the preservative or protection of property; (c) the health or safety of any person. When such conditions exist, the Superintendent and designated purchasing agents are authorized to purchase through non-competitive negotiation. The determination of an emergency and the details of the procurement shall be stated in writing.

* 1. The product or service to be procured is available from a single source.
	2. A necessity is temporarily unavailable from the contracted supplier.

When a particular necessity is temporarily unavailable from the contract supplier and the purchasing officer makes a written determination to that effect, the purchasing officer has the authority to treat such items as a single source of services or products and has authority to proceed to procure the same by non-competitive negotiation.

* 1. Contracts for services.

The District may contract for the services of licensed professionals such as attorney, physician, psychiatrist, psychologist, certified public accountant, registered nurse, or educational specialist: technicians such as plumber, electrician, carpenter, or mechanic; or an artist such as a sculptor, aesthetic painter, or musician; printers for special projects. This provision shall not apply to architects or engineers providing construction management services rather than professional architect or engineer services.

Noncompetitive negotiations for services of licensed professionals shall occur only when specialized training is required of the contractor, when a specific program or service can be delivered by only one or a few individuals, or when travel costs and time dictate constraints on the bidding process.

1. The contract is for the purchase of perishable items, as indicated in applicable federal and state law, purchased with funds other than school nutrition service funds on a weekly or more frequent basis.

Purchase of such items with school nutrition service funds shall be done consistent with methods authorized by federal regulation (7 C.F.R. §3016.36).

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Procurement

* 1. The contract or purchase is for replacement parts where the need cannot be reasonably anticipated and stockpiling is not feasible.
	2. The contract is for proprietary items for resale.
	3. Items for resale include printed documents: stocks and inventories for school bookstores; candies; soft drinks, and, all other items that are sold to students and to the general public. Supplies which must be processed prior to resale, such as food purchases for the lunchroom are not included as items for resale.
	4. The contract or purchase relates to an enterprise in which the buying or selling by students is a part of the educational experience.
	5. The contract or purchase is for expenditures made on authorized trips outside the boundaries of the service area of the agency.
	6. The contract or purchase is for purchase of supplies which are sold at public auction or by receiving sealed bids.
	7. The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker’s compensation insurance, or unemployment insurance.
	8. The contract or purchase is for a sale of supplies at reduced prices that will afford a purchase at savings to the school district.
	9. The contract or purchase is from a state, U.S. Government, or other public agency.
	10. The contract or purchase is from a state, U.S. Government, or other public agency price contract.
	11. Specifications cannot be made sufficiently specific to permit an award on the basis of either the lowest bid price or the lowest evaluated bid price.
	12. Sealed bidding is inappropriate because the available sources of supply are limited.
	13. The bid prices received through sealed bidding are unresponsive or unreasonable.

B. Reverse Auction

Competitive bidding or competitive negotiation for goods and leases may include use of a reverse auction, which is to be conducted as provided in KRS 45A.365 (competitive sealed bidding) or KRS 45A.370 (competitive negotiation).

1. Rejection of bids, consideration of alternate bids, and waiver of informalities in offers.

The conditions for bidding shall be applicable to and incorporated in all invitations for bids. Failure to comply with such conditions shall be cause for rejection of the bid. The Board or its designee retains the right to waive any informalities in offer.

1. Confidentiality of technical data and trade secrets information submitted by actual and prospective bidders or those who make offers.

Technical data and trade secrets information submitted by actual and prospective bidders are exceptions to the open records requirements and shall be rated confidentially.

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Procurement

1. Partial, progressive and multiple awards.

The district purchasing officer is authorized, when feasible, to advertise for bids as a discount from a price list or catalog. The conditions shall state that multiple awards may be made. When such multiple awards are made, purchases at the contract discount may be made form such price lists or catalogs without further negotiation. However, any changes in the price list exceeding 10% during the period of the contract shall disqualify such items from purchase.

1. Supervision of store rooms and inventories, including determination of appropriate stock levels, and the management, transfer, sale or other disposal of government-owned property shall be the responsibility of the purchasing officer of the district.
2. Definitions and classes of contractual services and procedures for acquiring them.

The District may obtain the services of various classes of professionals, technicians, and artists by non-competitive negotiation when specialized training is required of the contractor, when a specific program or service can be delivered by only one or a few individual, or when travel costs and time dictate constraints on the bidding process.

1. Procedures for the verification and auditing of local public agency procurement records.

The Superintendent shall maintain sufficient records for the Board to verify all purchasing agreements and purchases made through such agreements. Financial records of all transactions related to the purchase of goods and services for the District or individual schools are subject to an annual financial audit.

1. Except as permitted by law, every invitation for bid or request for proposals shall provide that an item equal to that named or described in the specifications may be furnished.

Federal Grants Purchasing Addendum

These procedures will be used by the District for the acquisition of property or services required under a federal award or subaward.

* + 1. The District will maintain oversight to ensure all contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
		2. The District will demonstrate strong oversight of funds by:
		3. Avoiding acquisition of unnecessary or duplicative items
		4. Consolidating or breaking out procurements to obtain a more economical purchase, unless doing so results in the District lowering the contract amount and avoiding the more competitive procurement process (e.g., informal vs. formal procurement) which would be required at the higher cost threshold
		5. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

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Procurement

Federal Grants Purchasing Addendum (continued)

* + 1. The District may enter into state and local intergovernmental agreements, or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
		2. The District will use federal excess and surplus property instead of purchasing new equipment and property whenever such use is feasible and reduces project costs.
		3. The District will only award contracts 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.
		4. The District will maintain records sufficient to detail the history of each procurement. These records will include, but are not limited to, rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
		5. Avoidance of time-and-materials type contracts. The District will use a time-and-materials type contract, only after a determination that no other contract is suitable and the contract must include a ceiling price that the contractor exceeds at its own risk. If awarding such a contract, the District will assert a high degree of oversight to have reasonable assurance that the contractor is using efficient methods and effective cost controls.
		6. The District will take all necessary affirmative steps to ensure that minority businesses, women’s business enterprises, veteran-owned businesses, and labor surplus area firms are used when possible, in accordance with [2 CFR 200.321](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.321).
		7. The District will, as appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The requirements of [2 CFR 200.322](https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.322) will be included in all contracts and purchase orders for work or products.
		8. The District will ensure full and open competition for procurement transactions using federal funds, including but not limited to, excluding contractors that develop specifications, statements of work, requirements, etc. from competing for such contracts; not specifying a particular brand name in a proposal; and/or not taking an otherwise arbitrary action. 2 CFR 200.319.

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Procurement

Federal Grants Purchasing Addendum (continued)

* + 1. The District will perform a cost-benefit or price analysis in connection with every procurement action in excess of the state/local requirements of $40,000, including contract modifications. The methods and degree of analysis will depend on the facts of each individual procurement, but as a starting point, the District will make independent estimates of costs before receiving bids or proposals. 2 CFR 200.324.
		2. Upon request and consistent with 2 CFR 200.325, the District will make available to KDE the technical specifications on proposed procurements where KDE believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition.
		3. For construction or facility improvement contracts exceeding the state/local requirements of $40,000, the District will ensure appropriate bonding requirements are met. 2 CFR 200.326.
		4. The District’s contracts will contain the applicable provisions described in Appendix II to 2 CFR Part 200. All contracts made by the District under the federal award will include the following provisions, as applicable:
			1. Contracts for more than the simplified acquisition threshold ($250,000) or a lower amount set by state/local requirements (currently set at $40,000 per KRS 45A.385), must address administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for sanctions and penalties as appropriate.
			2. All contracts in excess of $10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.
		5. All contracts that meet the definition of ‘federally assisted construction contract’ will include the equal opportunity clause provided under 41 CFR 60-1.4(b).
			1. Construction (including renovation, decoration and maintenance) contracts in excess of $2,000 will include a provision for compliance with the Davis-Bacon Act.
			2. Contract Work Hours and Safety Standards Act. All contracts awarded by the District over $100,000 that involve the employment of mechanics or laborers will include a provision for compliance with 40 U.S.C 3702 and 3704.
			3. Contracts awarded by the District in excess of $150,000 will contain a provision that requires the parties to agree to comply with applicable requirements of the Clean Air Act and the Federal Water Pollution Control Act.

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Procurement

Federal Grants Purchasing Addendum (continued)

* + - 1. Debarment and Suspension. The District will not award any contract to a party listed on the governmentwide exclusions in the System for Award Management (SAM.gov).
			2. Byrd Anti-Lobbying Amendment. The District will ensure that contractors that apply or bid for an award exceeding $100,000 file the required certification, and that each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or award.
			3. Procurement of recovered materials. As applicable, the District will ensure contractors are in compliance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
			4. Prohibition on certain telecommunications and video surveillance services or equipment. The District will ensure the contractor does not subcontract, procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115–232](https://www.govinfo.gov/link/plaw/115/public/232%22%20%5Ct%20%22_blank), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
			5. Domestic preferences for procurements. As appropriate, practicable and to the extent consistent with law, the District will ensure the contractor agrees to provide a preference for the purchase, acquisition or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement and other manufactured products).