

Board Policy

Procurement of Goods and Services

Determining When a Procurement of Goods and Services is Subject to Competitive Bidding

All bidding/quoting thresholds are applicable to substantially similar goods and/or services in the aggregate for Eastern Suffolk BOCES.

Procurement of goods and services is subject to competitive bidding based upon the following:

1. Under the provisions of §103 of the NYS General Municipal Law, all public works contracts (labor and materials) involving an expenditure of over thirty-five thousand dollars (\$35,000) and purchase contracts (material only) of over twenty thousand dollars (\$20,000) must be advertised for competitive bidding and a contract (if any) awarded to the lowest responsible bidder.
2. The aggregate cost to Eastern Suffolk BOCES of an item or commodities (custodial supplies, audio-visual equipment, etc.) is considered for purchases in a fiscal year.
3. The term “public works contract” applies to those items or projects involving labor or both material and labor. Included in this category are construction, paving, printing, repair contracts, plumbing, electrical, etc.

Cooperative Bid Arrangements (§119-o of NYS General Municipal Law) must be in accordance with §103 of the NYS General Municipal Law.

Competitive bidding is required by §103 of the NYS General Municipal Law for the following:

1. lease/rental of personal property (§1725 of NYS Education Law);
2. "lease-purchasing" agreement for instructional equipment (§1725-A of NYS Education Law);
3. "installment purchase" of equipment, machinery, and apparatus (§109-B of NYS General Municipal Law) *Note – See addendum Executive Bulletin, March 1989;
4. Standardization (§103 of NYS General Municipal Law) makes it possible for a governing board to standardize a particular type of material or equipment. This does not eliminate the necessity to conform to the competitive bidding requirement. The only exception is that there is no longer a need for the inclusion of the term “or equivalent” after make or model;
5. Transportation contracts and cafeteria contracts covered by “NYS Education Law” are subject to same dollar limits as “Purchase Contracts” under §103 of NYS General Municipal Law (§305, Subdivision 14, NYS Education Law); and

6. Procurement of Goods and Services using Best Value Method of Procurement: General Municipal Law (GML) §103 was amended to permit a school district or BOCES to award purchase contracts in excess of twenty thousand dollars (\$20,000) on the basis of "best value," rather than on the basis of the lowest responsible bid.

Procedure: Prior to soliciting the bid, the ESBOCES Purchasing Agent or designated representative shall determine the evaluation criteria to be used, which, whenever possible, shall be quantifiable. Said criteria should become part of the procurement record. Documentation of the award shall be in accordance with GML §103.

Competitive bidding is not required by law for the following, and the procedure and documentation to support this determination is indicated:

1. An "emergency purchase" is the need for the procurement of goods and services arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property, the life, health, safety or property of the inhabitants of a political subdivision are involved, which require immediate action which cannot await competitive bidding or competitive offering (§103(4) of NYS General Municipal Law).

Procedure: A memorandum should be filed explaining how an emergency purchase meets the above criteria and copy attached to Purchase Order. The Board should pass a resolution declaring an emergency, prior to the purchase if feasible.

2. Purchases from Government Contracts
 - a. New York State Contracts (§104 of NYS General Municipal Law);
 - b. Federal General Services Administration (GSA) Contracts for information technology and telecommunications hardware, software, and professional services; GSA schedule 70, information technology and consolidated schedule contracts shall comply with Federal schedule ordering procedures as provided in Federal Acquisition Regulation 8.405-1 or 8.405-2 or successor regulations;
 - c. County contracts (§408-A of NYS County Law; §103(3) of NYS General Municipal Law);
 - d. BOCES cooperative bids;
 - e. Piggybacking: General Municipal Law (GML) §103 was amended to allow school districts to purchase certain goods and services (apparatus, materials, equipment, and supplies) through the use of contracts let by the United States or any agency thereof, any state, and any county, political subdivision, or district of any state. The amendment authorizes school districts and BOCES to "piggyback" on contracts let by outside governmental agencies in a manner that constitutes competitive bidding "consistent with state law."

This "piggybacking" is permitted on contracts issued by other governmental entities, provided that the original contract:

- i. has been let by the United States or any agency thereof, any state (including New York State), or any other political subdivision or district therein;

- ii. was made available for use by other governmental entities and agreeable with the contract holder; and
 - iii. was let in a manner that constitutes competitive bidding consistent with New York State law, or was awarded on the basis of best value, and is not in conflict with other New York State laws.
- f. Municipal purchasing agreements; and
- g. Surplus and second-hand supplies or equipment purchased from the Federal government, the State of New York, or any other political subdivision within the State of New York (NYS General Municipal Law, §103[6]; 21 Opinions of the State Comptroller, 1965, p. 615).

Procedure: A reference to a contact should be stated on the Purchase Order.

3. Purchases from Preferred Sources

- a. NYS Preferred Source Program for People who are Blind (NYSPSP) - (§162 of NY State Finance Law); and
- b. NYS Industries for the Disabled – (§162 of NY State Finance Law); and
- c. Corcraft – prison-made goods (Article 7, §184 of NYS Correction Law).

Procedure: A quote from the Preferred Source must be attached to the purchase order in the financial system

4. Purchases from Sole Source Suppliers

Competitive bidding is not required under §103 of NYS General Municipal Law where the object of the contract is controlled by a sole source, such as in the case of natural gas and electric utilities.

Should particular products be obtainable only directly from a specific manufacturer (sole source), then a true sole source would exist and the purchase would not be subject to bidding requirements. However, should there be a possibility of purchasing the item from two or more suppliers, the purchase may fall under the bid requirements.

Procedure: A sole source letter is attached to the purchase order.

5. Purchases in Alternative Formats

In accordance with law, ESBOCES shall give a preference in the purchase of instructional materials to vendors who agree to provide materials in alternative formats. The term “alternative format” shall mean any medium or format for the presentation of instructional materials, other than a traditional print textbook, that is needed as an accommodation for a disabled student enrolled in a BOCES program, including but not limited to Braille, large print, open and closed captioned, audio, or an electronic file in a format compatible with alternative format conversion software that is appropriate to meet the needs of the individual student.

Procedure: See purchases from sole source suppliers.

Procurement of Material under the Bid Limits

Whenever feasible, State Contracts, County Contracts, Municipal and Cooperative agreements, and preferred sources shall be used for purchases that are not required to be bid. When not feasible to order from the above contracts or agencies the following procedures will be followed:

1. For purchases under four thousand dollars (\$4,000), one (1) quotation shall be required.
2. For purchases from four thousand dollars (\$4,000) through seven thousand nine hundred ninety-nine dollars (\$7,999), a minimum of three (3) fax, e-mail, or informal written quotations must be solicited. The results must be attached to the Requisition or the Purchase Order on a form provided for this purpose. The following shall be provided:
 - a. the name, address, and telephone number of the vendor;
 - b. the name of the contact person at the company; and
 - c. the item(s) to be purchased, specifying quantity, brand name, and model number.
3. For purchases from eight thousand dollars (\$8,000) through twenty thousand dollars (\$20,000), a minimum of three (3) formal written, e-mail, or fax quotations must be solicited and attached to the Purchase Order or Requisition as described in the above paragraph.
4. For public works purchases from twenty thousand dollars (\$20,000) through thirty-five thousand dollars (\$35,000), a minimum of three (3) formal written, e-mail, or fax quotations must be solicited and attached to the Purchase Order or Requisition as described above.

The following are exempt from bid requirements:

1. Contracts for professional services, software licenses and support agreements, and computer services requiring specialized expertise, use of professional judgment, and/or a high degree of creativity, such as, but not limited to, legal services, medical services, insurances, property appraisals, engineers, architects, investment management, IT consultants, and experts in specific educational areas, are exempt from bidding. However, the Purchasing Agent may decide if the solicitation of a Request for Proposal is in the best interest of ESBOCES and in accordance with General Municipal Law. In the case of shared services, ESBOCES may issue a Request for Proposal with a roster of vendors;
2. Contracts for State-mandated operations that require expertise, such as inspection of underground fuel tanks, may be awarded without the solicitation of proposals by ESBOCES; and
3. The acquisition of products for testing and evaluation purposes.

Notwithstanding the above, ESBOCES shall utilize a competitive Request for Proposal process when contracting for the annual audit by an independent certified public accountant or an independent public accountant. The audit engagement shall not be for a term longer than five (5) consecutive years, provided, however, that an independent certified public accountant or an independent public accountant engaged under an existing contract for such services may submit a proposal for audit services in response to a request for competitive proposals, or be awarded a contract to provide such services under a Request for Proposal process.

Rejection of Low Bidder

Bids for purchase contracts must be awarded to the lowest responsible bidder whose product or service meets or exceeds specifications. ESBOCES reserves the right to reject any and all bids, to re-advertise for new bids.

Specifications must be detailed enough to permit as precise an evaluation as possible of the product or service. Comparison of various products or services can then be made against the specifications desired.

The past performance and/or reliability of the bidder is a factor in determining the lowest responsible bidder.

1. It shall be the practice of ESBOCES to maintain accurate and complete records as to the performance of any contractor/vendor so that "failure to perform" can be well documented for future contracts or bids for goods or services.
2. Further, ESBOCES will cooperate fully with school districts in providing such information between and amongst themselves for the purposes of selecting the lowest responsible bidder in future contracts or bids for goods or services.
3. If the award is questionable, consultation with ESBOCES legal counsel is recommended if the lowest bidder is not selected.

Such factors indicating unacceptable performance or products may include, among other factors:

1. inability to provide items as specified and awarded in previous bids;
2. inability to deliver materials or services in a timely fashion as required by bid specifications;
3. the substitution of alternate items to those awarded without informing ESBOCES, whether or not substitutions are equal to or better than the item specified;
4. varying in any way from prescribed procedures and/or specifications for the performance of the service or contract without prior written approval of ESBOCES;
5. products which do not meet ESBOCES standards as determined through its own testing and evaluation procedures, whether conducted appropriately in-house or using third party analysis/testing;
6. failure to provide independent testing documentation when specified to substantiate whether the substitute equipment or products meets or exceed bid specifications;
7. failure or difficulty in providing acceptable certificates of insurance or performance bonds, where required or specified;
8. use by vendor of subcontractors who provide inferior products or services and/or when a subcontractor is obtained without prior written approval of ESBOCES;
9. failure to provide adequate references; loss of certification as a qualified installation contractor from material suppliers; and
10. failure to provide samples of alternate bid items when requested.

The person(s) participating in the decision determining if a bidder is or is not responsible should provide signed, written justification and documentation. This information will become part of the bid file.

Uniform Guidance Compliance for Federal Awards – Procurement, Suspension and Debarment

2 CFR Part 200, Subparts A-F (*Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*) (hereinafter “Uniform Guidance”) requires organizations receiving Federal awards to establish and maintain effective internal controls when procuring goods and services needed to carry out such Federal awards.

General Policy Statement

The requirements for procurements using Federal awards are contained in the Uniform Guidance, program legislation, Federal awarding agency regulations, and the terms and conditions of the award.

To comply with Uniform Guidance, ESBOCES implements policies and procedures, including, but not limited to:

1. ESBOCES will use its own documented procurement procedures consistent with applicable State, local and tribal laws and regulations, provided that the procurements conform to applicable Federal law and Uniform Guidance. As such, ESBOCES procurements related to Federal grants will be subject to New York State General Municipal Law, this policy, and Uniform Guidance Requirements.
2. Contract files will document the significant history of the procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis of contract price.
3. ESBOCES will utilize one of the five acceptable procurement methodologies detailed in §200.320 which include:
 - a. Micro-purchases
 - b. Small purchase procedures;
 - c. Sealed bids;
 - d. Competitive proposals; and
 - e. Noncompetitive proposals (sole source).
4. Procurements will provide for full and open competition as set forth in the Uniform Guidance and State and local procurement thresholds.
5. 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 can neither solicit nor accept gratuities, favors, or anything of

monetary value from contractors or parties to subcontracts. If the financial interest is not substantial or the gift is an unsolicited item of nominal value, no further action will be taken. Otherwise, however, disciplinary actions will be applied for violations of this section.

6. ESBOCES will avoid acquisition of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical procurement approach. ESBOCES will also analyze other means, as described in §200.318 of the Uniform Guidance, to ensure appropriate and economical acquisitions.
7. ESBOCES will enter into State and local intergovernmental agreements or inter-entity agreements, where appropriate.
8. ESBOCES will only utilize Time and Materials contracts only when it has been determined, in writing, that no other contract type is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk, and will otherwise be consistent with §200.318.
9. Vendors/Contractors that develop or draft specifications, requirements, statements of work, or invitation to bids or requests for proposals must be excluded from competing for such procurements.
10. In order to implement the requirements of § 200.319(d), ESBOCES adopts the following written procedures for procurement transactions, and will ensure that all solicitations:
 - a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, except when it is impractical or uneconomical, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement; and
 - b. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
11. ESBOCES will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed.
12. Agency Programs are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. “Covered Transactions” include those procurement contracts for goods and services awarded under a non-procurement transaction (e.g., grant or cooperative agreement) that are expected to equal or exceed \$25,000. All non-procurement transactions, irrespective of award amount, are considered covered transactions, except for those transactions identified in 2 CFR § 180.215.
13. ESBOCES will include a suspension/debarment clause in all written contracts in which the vendor/contractor will certify that it is not suspended or debarred. The contract will also contain language requiring the vendor/contractor to notify ESBOCES immediately upon becoming suspended or debarred. This will serve as adequate documentation as long as the contract remains in effect.

14. ESBOCES programs will be required to notify the Purchasing Department that Federal funding will be used for a certain procurement/contract. When requesting a written bid or contract, the purchasing office will be responsible for running the name of the vendor/contractor through the System for Award Management (SAM) to determine any exclusions. A copy of the SAM search will be included with the contract request. Prior to issuing a Purchase Order using Federal funds, the Purchasing Department will check the SAM to determine if any exclusions exist for the vendor/contractor. If a vendor/contractor is found to be suspended or debarred, ESBOCES will immediately cease to do business with the vendor.
15. ESBOCES will not use statutorily or administratively impose 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 geographical preference.
16. ESBOCES will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor area surplus firms are used when possible.
17. ESBOCES will procure recovered materials in compliance with §200.323.
18. ESBOCES will perform a cost or price analysis relating to every procurement more than the Simplified Acquisition Threshold including contract modification, as defined under Federal law, and will otherwise comply with §200.324 as necessary.
19. ESBOCES will require appropriate bonding requirements as per §200.326.
20. ESBOCES will only award contracts to Responsible Vendors/Contractors capable of performing successfully under the terms and conditions of a proposed procurement and will document, in writing, such determination.
21. ESBOCES contracts will contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
22. ESBOCES Programs will maintain oversight to ensure that contractors perform in accordance with the contracts terms, conditions, and specifications, as well as applicable federal requirements and performance expectations under the federal award for each program, function or activity.
23. Copies of executed contracts will be maintained in the Purchasing Department and Purchase Orders will be maintained in the WinCap Procurement System

Authorization to Purchase

The Purchasing Agent is authorized to issue Purchase Orders where formal bidding procedures are not required by law, where purchases are made using Board approved bids and Request for Proposals and when budget appropriations are adequate to cover such obligations in accordance with administrative regulations and approved by the appropriate administrator.

Review

ESBOCES will annually review its policies and procedures. The policies shall be adopted by the Board at the Annual Organizational Meeting.

Unintentional Failure to Comply

The unintentional failure to fully comply with the provisions of General Municipal Law §104-B shall not be grounds to void action taken or give rise to a cause of action against ESBOCES or any officer or employee thereof.

References:

- Federal Register 2 CFR §200 (Subparts A-F) – General Procurement Standards
- NYS Education Law §§1725, 1725-A, 1950, 3602, 2116-a and 305
- NYS General Municipal Law §§103, 104, 109-B, and 119-O
- NYS General Municipal Law Article 5-A and 18
- NYS Finance Law Article XI
- NYS Correction Law Article 7, §184
- NYS County Law §408-A
- Administrative Regulation 4311R.1 - Professional Services Contracts

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