

Procedure - Bid Requirements

- I. The following procedures will be in effect for purchasing and public works through the bidding process:
 - A. Formal bids will be opened and read in public on the date and in the place named in the notice and after being opened shall be filed for public inspection, and any interested member of the public may attend the bid opening. It will be the bidder's sole responsibility to see that his/her bid is delivered to the district prior to the time set for opening of bids. Any bid received after the time set for opening the bids will be returned to the bidder unopened and will receive no consideration by the district;
 - B. Formal bid tabulations may be presented at a meeting of the board for study purposes;
 - C. Formal bid awards will be made by the board on the basis of staff recommendations;
 - D. Brand names and manufacturers' catalog numbers used in specifications are for the purpose of identification and to establish a standard of quality. Bids on equal items may be considered providing the bidder specifies brand and model and furnishes descriptive literature. The acceptance of alternative "equal" items will be conditioned on the district's inspection and testing after receipt. If not found to be equal, the items will be returned at the seller's expense and the contract canceled;
 - E. The district will reserve the right to reject any or all bids, waive any formalities and/or irregularities, and cancel the solicitation, if a reason exists;
 - F. On construction projects, the bidder will include a notarized statement agreeing to comply with prevailing wage and affirmative action requirements and provide a payment and performance bonds;
 - G. The superintendent or designee may solicit bids by telephone and/or written quotation for purchases of furniture, equipment, and supplies which have an estimated cost in excess of \$40,000 up to \$75,000. At least three telephone or written quotations will be secured prior to the date established by the superintendent or designee. All telephone quotations must be confirmed in writing promptly in order to constitute a valid quotation; and
 - H. For public works projects estimated to cost \$300,000 or less, the superintendent or designee may solicit bids by telephone, electronic, or written quotations from contractors on the appropriate small works roster. The district will not break a project into units or phases in order to come within the scope of the small works roster process or limited public works process. The small works roster will be revised at least once each year by publishing a notice of such opportunity in at least one newspaper of general circulation in the district. Also, responsible contractors will be added to the small works roster any time they submit a written request and necessary records. The application form be designed to collect such information as (1) name of contractor, (2) state of Washington contractor's license number, (3) bonding verification, (4) liability insurance coverage, (5) related contracts completed, and (6) references (bond and clients). Contractors desiring to be placed on or remain on the small works roster are required to keep current records of applicable licenses, certifications, registrations, bonding, insurance or other appropriate matters on file with the district.

The following steps will be employed to engage a contractor for a small works project:

1. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. Completion date; contractor's assurances (prevailing wages, fair employment, etc.); bid and payment and performance bond requirements; opportunity to visit the work site; closing date; and bid form may be provided, however, detailed plans and specifications need not be included in the invitation;
 2. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from \$150,000 to \$300,000, and the district chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster, the district will notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The district has the sole option of determining whether this notice to the remaining contractors is made by: (i) publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means;
 3. Immediately after an award is made, the bid quotations obtained will be recorded, open to public inspection, and available by telephone inquiry; and
 4. The district will award the contract to the lowest responsible bidder as defined in RCW 39.04.010. The district will make available a list of the contracts awarded under that process at least once every year. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection.
 5. For limited public works projects estimated to cost less than \$35,000 the superintendent or designee may solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster. The contract may be awarded to the lowest responsible bidder as defined in RCW 39.04.010. After an award is made, the quotations received are open to public inspection and are available by electronic request. The superintendent or designee will attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. The district will maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the work performed, and the date the contract was awarded. A project may not be divided into parts in order to qualify for the limited public works process.
- I. **Auction purchases (RCW 39.30.045)** - Local governments may purchase supplies, equipment or materials at auctions without being subject to public bidding requirements if the items can be obtained at a competitive price. The use of the auction purchase exception under RCW 39.30.045 does not distinguish between auctions where bids are tendered in person from auctions where bids are tendered through some other medium, such as the Internet. For example, eBay's auction service would appear to satisfy a common law definition of "auction" in the absence of any statutory definition. This analysis does not apply to eBay or other fixed-price Internet marketplaces.

Any local government (excluding diking and drainage districts, since they are excluded from RCW 39.04.010) may use an auction as an alternative to competitive bidding by meeting the following requirements:

1. Purchase must be of "supplies, equipment or materials."
2. Transaction must be an "auction" transaction—with the government making a competitive bid (or sequential bids) typically within a prescribed timeframe, subject to participant rules and to the seller/auctioneer's discretion to reject bids under certain conditions.
3. Auction purchase is only permitted "if the items can be obtained at a competitive price."

The "competitive price" condition appears to require the municipality to make reasonably informed factual determinations in advance of bidding at an auction as to the expected fair market value (FMV) of the item(s) the municipality seeks to purchase. Such determinations would presumably control bidding activity, such as when a municipality would not bid or would terminate bidding—e.g., if during the bidding the bids exceeded known FMVs.

When estimating the "competitive price," we would expect the government to include expected transaction costs such as any auction fees, commissions, and/or shipping and handling costs.

- J. **Telecommunications and Data Processing Purchases** - RCW 39.04.270 allows all local governments in Washington to use a competitive negotiation process when purchasing telecommunications and electronic data processing (computer) equipment or software, instead of traditional competitive bidding.

This alternative process requires, at a minimum:

- A request for proposals (RFP) must be published in a newspaper of general circulation at least 13 days before the submission deadline.
- The RFP must be submitted to three qualified sources to permit reasonable competition.
- The RFP must identify significant evaluation factors, including price, and their relative importance.
- The agency must provide reasonable procedures for technical evaluation of the proposals, identification of qualified sources, and the selection process for awarding the contract.
- The contract must be awarded to the qualified bidder whose proposal is "most advantageous" to the agency.
- The agency may reject all proposals for good cause and request new proposals."

- II. The following will be in effect for purchasing and public works awards:

- A. The contract for the work or purchase shall be awarded to the lowest responsible bidder as described in RCW 39.26.160(2) but the board may by resolution reject any and all bids and make further calls for bids in the same manner as the original call. In determining whether the bidder is a responsible bidder under RCW 39.26.160(2), the district must consider the following elements:
1. The ability, capacity, and skill of the bidder to perform the contract or provide the service required;
 2. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
 3. Whether the bidder can perform the contract within the time specified;

4. The quality of performance of previous contracts or services;
 5. The previous and existing compliance by the bidder with laws relating to the contract or services;
 6. Whether, within the three-year period immediately preceding the date of the bid solicitation, the bidder has been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW (before award of a contract, a bidder shall submit to the district a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of this subsection); and
 7. Such other information as may be secured having a bearing on the decision to award the contract.
- B. Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:
1. At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;
 2. Have a current state unified business identifier number;
 3. If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;
 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
 5. If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation;
 6. Until December 31, 2013, not have violated RCW 39.04.370 more than one time as determined by the department of labor and industries; and
 7. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW (before award of a contract, a bidder shall submit to the district a signed statement in accordance with RCW 9A.72.085 verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of this subsection).

In addition to the bidder responsibility criteria, the district may adopt relevant supplemental criteria in accordance with RCW 39.04.350(3) for determining bidder responsibility applicable to a particular project which the bidder must meet.

- III. Formal written contracts will be prepared for all major construction and repair projects. Such contracts will be signed by the board president/chair and secretary on behalf of the district after the contracts have been awarded by a majority vote of the board with action recorded in the minutes of the board meeting. All contracts will provide that, in the event of a suit by the district to enforce the terms of the contract, venue for the suit will be county in which the district is located and that, if the district is successful in the suit, the court may order reimbursement of the district's attorney's fees and court costs in such amount as the court deems reasonable.
- IV. The district shall include in any contract for services with an entity or individual other than an employee of the district a provision requiring the contractor to prohibit any employee of the contractor from working at a public school who has contact with children at a public school during the course of his or her employment and who has pled guilty to or been convicted of any felony crime specified under RCW 28A.400.322. The contract shall also contain a provision that any failure to comply with this section shall be grounds for the district immediately terminating the contract.

Adoption Date: 10.23.17

MABTON SCHOOL DISTRICT

Revised Dates: **06.00; 06.01; 10.05; 12.09; 12.11; 07.17; 04.21**