

PURCHASING REGULATION

Pursuant to the terms of the Intermunicipal Agreement (“IMA”) between the Yonkers City School District (the “District”) and the City of Yonkers (the “City), effective June 16, 2014, the City, through its Purchasing Department (“Purchasing”), manages the District’s purchasing process. This Regulation sets forth the procedures for the procurement of goods and services for the District, in compliance with the terms of the IMA.

Section 1. Statement of Purpose

This Regulation shall apply to all procurements commenced on or after the date of adoption of this document. The Board shall ensure that all goods and services are procured in compliance with the competitive bidding requirements of New York State General Municipal Law (“GML”) Section 103 and/or pursuant to express procurement procedures provided for under any other federal or state law applicable to such procurement. Procurements not subject to the GML shall be procured in a manner that:

1. is consistent with the applicable budget;
2. encourages the prudent and economical use of public monies in the best interest of the taxpayers;
3. facilitates the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances; and
4. guards against favoritism, improvidence, extravagance, fraud, and corruption.

Section 2. Determination Required

The District, prior to commencing a procurement of materials, equipment, supplies, and/or the awarding of public work contracts, shall determine whether such procurement must be made in accordance with the competitive bidding requirements of GML Section 103 through Competitive Sealed Bidding (“CSB”) or the procurement is exempt from such requirements. For each procurement, the Director of Purchasing (the “Director), in conjunction, to the extent applicable, with the Office of the Corporation Counsel (the “Law Department”), shall make this determination. If it is determined that the bidding requirements of GML Section 103 do not apply, the Director or his/her/their designee shall document the reason(s) why competitive bidding is not required and, if applicable, any determination that such procurement is not subject to any of the requirements set forth in this regulation. As used herein, the term “Procuring Officer” shall mean the Director or, as applicable, the individual or individuals in Purchasing authorized by the foregoing to undertake the procurement.

Section 3. Application

A. Competitive Sealed Bidding

1. Under GML Section 103, CSB is required for all contracts for public work (contract for services, labor, and/or construction of new facility, facility rehabilitations and/or renovations) involving an expenditure of more than \$35,000 and all purchase contracts (contracts for materials, equipment, supplies, and/or services) involving an expenditure of more than \$20,000. CSB must be awarded to the lowest responsible bidder after bids have been received in response to a public advertisement soliciting formal bids.
2. CSB is required when Purchasing, based on historical spending or projected needs, reasonably expects that the aggregate amount to be spent in a fiscal year for the same or similar type of commodities or public work contracts will exceed the bidding thresholds. Specifically, Purchasing must group together similar commodities and services acquired in a twelve-month period for the purpose of determining whether formal competitive bids must be solicited.
3. CSB is required regardless of whether the purchase is made utilizing operating funds, funds for capital improvement, donations, and/or Federal or New York State grants.
4. Purchasing, in consultation with the appropriate District department(s), shall ensure that all scopes of work and/or bid specifications pursuant to CSB meet the requirements below. The scope of work and/or bid specifications must:
 - a. contain sufficient information for all vendors to provide a formal sealed bid on an equal playing field;
 - b. provide the standards by which all bidders will be measured;
 - c. assure bidders that they will be competing on a common and equal basis;
 - d. include a precise description of the physical or functional characteristics of the commodity and/or service, provided that the specifications are not unduly restrictive so as to limit competition;
 - e. include a statement, as required by GML Section 103-g, reflecting the District's responsibilities under the Iran Divestment Act of 2012;
 - f. not require bidders be located within certain boundaries or that a product be made in the United States of America;
 - g. not specify a particular brand at the exclusion of others; however, brand name products may be specified to the exclusion of others if the Board has adopted a standardization resolution for reasons of efficiency or economy;
 - h. in the case of a procurement made pursuant to grant funds, include any additional or specific conditions of the grant expenditure; and

- i. in the case of a public work contract, be in compliance with the New York State Department of Labor (“DOL”) guidelines and Westchester County Law regarding, but not limited to, minimum pay rates, worker certification requirements, obtaining a DOL case number, bid security requirements, contract performance, labor, and material bonding requirements, and providing the required DOL notifications.
5. The District shall advertise all CSB in an official newspaper (e.g., Journal News and/or Yonkers Rising) for a minimum of five (5) days prior to the opening of bids.
6. Purchasing shall review all bids and determine whether the bid is responsive and the bidder is responsible.
 - a. A bid is considered responsive when the bid conforms to the technical, legal, and business requirements of the CSB process.
 - b. A bid shall be deemed non-responsive when it does not comply with the bid specifications, contains any deviation that affects the price, delivery, quality, or quantity of the goods or services to be furnished, and/or conflicts with the District’s standard terms and conditions. Examples include, but are not limited to, bids that qualify pricing, are valid for less than ninety (90) days, are uncertain or ambiguous, or do not conform to delivery requirements.
 - c. A bidder is considered responsible if the District has determined the bidder has, among other things, the integrity, skill, experience, facilities, financial resources, and stability to successfully fulfill the requirements of the CSB process.
 - d. A bidder is considered not responsible if the bidder fails to meet the District’s standards and includes, but is not limited to, bidders who have a history of poor performance on contracts of a similar nature with Yonkers and/or other municipalities, have been debarred, are in tax arrears, or have criminal or civil sanctions.
7. The District must award the contract to the lowest responsive and responsible bidder at a firm, fixed price for the duration of the contract term. Any bid deemed non-responsive and/or bidder deemed not responsible shall be rejected, even if it is the apparent lowest bidder.
8. After sealed bid is opened, a bidder may not materially amend its bid, even to conform to the original specifications. However, a bid may be withdrawn, within three (3) days after bid opening, when a bidder can demonstrate there was a unilateral error or mistake that was based on an error of such magnitude that enforcement would be unconscionable, the mistake was a clerical error and submits credible evidence, the error was due to an unintentional and substantial mathematical error that can be proven, and/or the error was due to the unintentional omission of a substantial quantity of work, labor, goods, or services.

9. The CSB process requires bidders to include a firm fixed price in its bids and the District may not negotiate with any bidder regarding their offer. However, based on the lowest responsive bid, the District may engage in post-bid “negotiations” with the bidder entitled to the contract award in an effort to gain cost concessions if: (1) there is no material departure from the specifications; (2) no favoritism is granted; and (3) the public interest is advanced through price reductions.
10. Purchasing may reject all bids and re-advertise when the lowest responsible bid exceeds the District’s budget, the integrity of the bidding process is in question, and/or the original bid specifications were ambiguous or essential information was missing.

B. Procurements Exempt from Competitive Bidding Requirements

1. Procurements of goods and services which are not required to be made pursuant to the competitive bidding requirements of the GML or any other general, special, or local law shall be procured in a manner so as to assure the prudent and economical use of public moneys in the acquisition of goods and services of maximum quality at the lowest possible cost.
2. Except as exempt by law, the District shall secure alternative proposals or quotations for goods and services through written requests for proposals, written quotations, verbal quotations, or any other method of procurement which furthers its ability to obtain the best offer available.
3. Purchasing, through the efforts of the Procuring Officer, shall review all proposals or quotations received, evaluate each offer, and determine which offer is most advantageous to the District. Purchasing shall also maintain adequate documentation of actions taken in connection with procurements for the District.
4. Procurements below \$100,000¹ shall be awarded as follows:
 - a. For a procurement of goods or services reasonably expected to cost less than \$5,000, the Procuring Officer shall exercise sound business judgment in order to enter into a contract with the offeror determined to be most advantageous to the District.
 - b. For a procurement of goods or services reasonably expected to cost between \$5,000 and \$25,000, the Procuring Officer shall exercise sound business judgment and shall use best efforts to obtain written or oral quotations from three (3) entities with appropriate qualifications and/or experience. The Procuring Officer shall make and retain a sufficient written record of the names, addresses, and phone numbers of all entities from whom quotations were

¹ When determining whether an expenditure falls within any applicable threshold, the Procuring Officer should consider the reasonably expected aggregate amount of all purchases of the same commodities, services, or technology to be made within any given twelve (12) month period.

sought, as well as the date and amount of each quotation received, and make a recommendation to enter into a contract with the offeror determined to be most advantageous to the District.

- c. For a procurement of goods or services reasonably expected to cost more than \$25,000 and less than \$100,000, the Procuring Officer shall use best efforts to obtain written quotations from three (3) entities with appropriate qualifications and/or experience. All entities contacted shall be provided a scope of work and/or specifications sufficient to provide a written price quote and/or proposal. The Procuring Officer shall take and retain a written record documenting procurement efforts, consider the quotations received, evaluate each offeror's qualifications and/or experience, and determine the offer most advantageous to the District. The Procuring Officer shall recommend contracting with the offeror making the offer determined to be most advantageous to the District.

5. Procurements \$100,000 and above shall be awarded as follows:

- a. For goods or services reasonably expected to cost \$100,000 or more, the Procuring Officer shall, except as otherwise set forth herein, solicit proposals through a request for proposals ("RFP") process. The RFP shall include:
 - 1. the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, and the name of the contact person;
 - 2. a sufficient scope of work and/or specifications, such as detailed description of the required goods or services; and
 - 3. the criteria on which the selection will be evaluated.
- b. The Procuring Officer shall cause the proposals to be opened and distributed to such other persons designated to assist in its evaluation.
- c. The Procuring Officer may reject any proposal which does not conform in all material respects to the RFP, is deemed insufficient, or is submitted by a proposer determined to not be responsible. In the event that the Procuring Officer determines that no proposal is satisfactory, the Procuring Officer may reject all proposals and issue a new RFP or abandon the procurement.
- d. After evaluation of all proposals, the Procuring Officer shall rank, in order of preference, all proposers based on the evaluation criteria specified in the RFP. The Procuring Officer shall document said evaluation and ranking.
- e. The Procuring Officer, with the assistance of Purchasing and/or the Law Department, shall negotiate the essential terms and conditions of a contract with the first ranked proposer. Should the Procuring Officer and/or the Law Department be unable to negotiate a satisfactory agreement with the first ranked proposer, the Procuring Officer shall (i) continue negotiations with additional

proposers in rank order until an agreement is reached, or (ii) terminate the procurement process.

- f. After reaching an agreement with a proposer, the Procuring Officer shall, in writing, recommend approval of a contract with the proposer determined to be most advantageous to the District, except as otherwise provided herein.

Section 6. Exceptions

It is acknowledged that all exemptions from competitive bidding, set forth in applicable law, apply herein. Particularly, the District is exempt from competitive bidding when contracting for professional services or services requiring special or technical skill, training, or expertise as the required qualifications do not readily lend themselves to inflexible competitive procurement procedures. Further, in certain instances, compliance with the Section 3(B) above may not be in the best interest of the District. In such cases, as set forth below, the individual or company must be chosen based on accountability, reliability, responsibility, skill, education and/or training, judgment, integrity, and moral worth.

Notwithstanding the foregoing, it is acknowledged and agreed that the Procuring Officer shall comply with the objectives of this Regulation set forth in Section 1 above. The Procuring Officer shall make and maintain a written record supporting his/her/their recommendation to contract and documenting the efforts made to comply with the objectives herein. Said record may include, but is not limited to, market price comparisons or the methods used to test the market, such as inquiring of other municipalities or districts or the use of the Empire State system. In compliance with applicable law, the following shall be exempt from competitive bidding:

1. contracts with expert witnesses for use in, or in anticipation of, an adjudicatory proceeding or litigation;
2. contracts with medical or health-related entities, including without limitation psychiatric workers and veterinarians;
3. contracts with lecturers, other educational professionals or experts, and institutions;
4. contracts with the following professionals: lawyers; accountants; auditors; financial advisors; information technology advisors; real estate brokers; recruitment agencies for professionals; planners and landscape architects. In the event that a determination is made that seeking competition in the procurement of the foregoing professionals would not be in the best interest of taxpayers, the head of the department requesting the professional service shall provide the Director a completed Request for Non-Competitive Contract Form providing sufficient justification in support of such contract;
5. procurements which involve the expenditure of federal or state assistance where and to the extent that federal or state law, rules, or regulations conflict with the provisions of this Regulation;

6. contracts with not for profit organizations for the support, enhancement, or preservation of cultural resources and the arts;
7. contracts with not for profit organizations for the purposes of providing aid, care, and support to persons in need;
8. contracts with recipients for the disbursements of grants or loans under the Community Development Block Grant, Emergency Shelter, or HOME Programs;
9. contracts with entities for the creation and support of recreation projects, youth service projects, and other appropriate programs and services for the prevention of delinquency and youth crime and the advancement of the moral, physical, mental, and social well-being of the District's youth;
10. contracts with entities to provide services to senior citizens including without limitation, for care, counseling, referral, case management, social and nutritional support, and other essential outreach services including grant funded contracts;
11. contracts for advertising, including public notices;
12. contracts for title insurance or title examination services;
13. contracts with banks and financial institutions licensed or chartered to do business in the State of New York;
14. contracts with another municipal corporation to perform services "one for the other" (see GML Section 119-o, see also the Highway Law);
15. contracts for real property leases (not inclusive of leases for personal property), licenses, and concessions and/or dispositions;
16. shared services obtained through another municipal entity, such as the County of Westchester. It should be noted that contracts requiring an RFP pursuant to Section 3(B)(5) above may rely upon an RFP issued by such other entity if said procurement is deemed timely and sufficient by the Director, applicable department head, and the Law Department; and
17. contracts deemed to be in the best interests of the District; however, any such request for this exemption shall be made by submission of a written recommendation, including sufficient justification by the department head/Procuring Officer to the Director certifying that such exemption is necessary and appropriate in order to further the best interests of the District. The Board of Contract and Supply ("BOCS") and/or the Board, as may be appropriate, has the express authority hereunder to approve or reject any such recommendation, it being recognized that the purpose hereof is always to encourage the prudent and economical use of public monies, while facilitating

acquisition of quality goods and services at the lowest cost under and to guard against favoritism, improvidence, extravagance, fraud, and corruption.

Section 7. Prequalification of Professionals and On-Call Contract List

A. Contracts with certain professionals, in addition to any other applicable Section herein, may be procured via the procedures set forth below.

1. A prequalification committee (the “Pre-Qual Committee”) shall be formed consisting of a representative or representatives from the applicable department(s) and Purchasing. Said Pre-Qual Committee may prepare a uniform request for qualifications (“RFQ”) form to be distributed and made widely available to interested professionals in the applicable field. Said RFQ should request information sufficient to enable the Pre-Qual Committee to evaluate the professionals in areas such as, but not limited to, expertise, previous work, quality of work, typical rates (per job title, unit, etc.), adequacy of personnel and/or workload capability, and/or financials.
2. A selection committee (the “Selection Committee”) may be formed including, without limitation, a representative or representatives from the applicable department(s) and Purchasing to evaluate the RFQ submissions. The Selection Committee will identify qualified professionals to be included on the eligible provider list (the “Pre-Qual List”), which will be maintained by the Director. The Pre-Qual List will be updated from time to time, at minimum annually, to ensure accurate information and include additional interested qualified professionals.
3. Any department seeking the services of such a professional may send a request to the Director. The Director and/or requesting department’s designee will evaluate the appropriate Pre-Qual List and select three (3) eligible professionals. The Director will prepare and distribute a uniform project description to said professionals requesting a written estimated project budget as well as any additional information deemed necessary and appropriate, such as current staffing and/or workload capacity. The Director and/or department designee, along with such other parties deemed appropriate, shall evaluate the responses received. The Procuring Officer shall document the results and recommend contracting with the vendor making the offer determined to be most advantageous to the District.

B. In addition to the foregoing, for procurements of professional services reasonably expected to cost less than \$100,000, the Selection Committee may, based on the results of the RFQ process, recommend that the District enter into one or more contracts with the professional(s) selected on an on-call/file price basis. The Director will maintain a list of all “on-call” contracts. Any department seeking the services of a professional with an “on-call” contract may send a request to the Director. The Director and/or Procuring Officer will evaluate the “on-call” list and select the eligible professional determined to be most advantageous to the District.

Section 8. Emergency Procurements

Pursuant to GML Section 103(4), it is recognized that certain contracts must be procured immediately in order to protect District property from further loss or damage or prevent or minimize serious disruption in District services, and a delay in order to seek alternate offers may threaten public life, health, safety, or welfare. In the event of such an emergency, the Procuring Officer shall complete the emergency certification form. The form shall be forwarded to the Director as soon as possible following the procurement to advise of said emergency procurement. The Director will advise the Board as well as the BOCS of any such procurement at its next practicable meeting. Nothing in this Section shall preclude the District from securing alternate proposals if time permits.

Section 9. Sole Source Procurements

A Procuring Officer may recommend awarding a contract when, after reasonable investigation, the Procuring Officer determines that only one practicable source for the required goods or service exists. The Procuring Officer shall document such sole source procurement, specifying the contractor's name and the basis for the determination that the contractor was the only practicable source for the required supply or service. The Procuring Officer shall submit his/her/their recommendation to the Director for review. The Director will make the final determination whether such procurement is recommended.

Section 10. Miscellaneous

- A. Records: Procurements hereunder shall be documented and shall include all applicable records (created or received), as well justification for any recommendation(s) made. Electronic or PDF copies of any such records are acceptable. Such written records shall be maintained in the Procuring Officer's files and/or forwarded to the Director for retention.
- B. Number of Responses: In the event that the identified number of quotations or proposals are not received, the Procuring Officer should use sound business judgment to determine if additional efforts are required to meet the objectives hereof. If the Procuring Officer determines that such additional efforts will not further District Policy or this Regulation, a statement shall be included in the recommendation explaining such determination.
- C. Scope of Work/Services: To encourage competition and a level playing field, the Procuring Officer shall ensure that all entities solicited are given the same information and updates thereto, if any.
- D. Negotiation: If the District is unable to successfully negotiate an agreement with a firm, company, individual, or professional selected hereunder, the District may commence negotiations with the next ranked firm, company, individual, or professional.
- E. Best Value: It is acknowledged that, in accordance with GML Section 103(16), in addition to letting contracts to the lowest responsible bidder, the District may, following the adoption of a resolution, let bid contracts on the basis of "best value." If the Procuring Officer recommends an offeror who did not offer the lowest net cost or the greatest net revenue, if net revenue is projected, the Procuring Officer shall document, in writing, why the proposed contract award

furtheres the purposes of District Policy and this Regulation. In assessing an offer, a best value standard may be used, which includes analysis of non-price factors such as the reliability of a product, efficiency of operation, difficulty/ease of maintenance, useful lifespan, ability to meet needs regarding timeliness of performance, and experience of a service provider with similar contracts. The Procuring Officer's written procurement records must reflect such analysis. The Procuring Officer shall submit his/her/their recommendation to the Director for review. The Director will make the final determination whether such procurement is recommended.

- F. Green Purchases: Energy efficiency may be considered as a part of a "best value" analysis. Additionally, in recognition of the long-term benefits, the District is permitted by law to provide a preference for "recycled products."
- G. Environmentally-Sensitive Cleaning and Maintenance Products: All elementary and secondary schools must purchase and use environmentally-sensitive cleaning and maintenance products that are available in the form, function, and utility generally used by schools in accordance with the law, regulation, and guidelines established by the New York State Office of General Services (OGS) and Education Department (SED). Cleansers purchased must, first and foremost, be effective so that the District may continue to purchase non-green products as necessary. Environmentally sensitive cleaning and maintenance products will be procured in accordance with standard purchasing procedures as outlined in this Regulation. Nothing herein shall be interpreted to contravene such requirements.
- H. School District Requirements: It is expressly acknowledged that the District, pursuant to law, is subject to certain special procurement requirements and the District shall adhere to such requirements in accordance with the law.
- I. Apparel or Sports Equipment: Notwithstanding any other provision of law or hereunder, the District shall have the authority to include in the internal policies and procedures governing procurement of apparel or sports equipment, where such procurement is not required to be made pursuant to the competitive bidding requirements of GML Section 103, a prohibition against the purchase of apparel or sports equipment from any vendor based upon either or both the following considerations: (a) the labor standards applicable to the manufacture of the apparel or sports equipment including, but not limited to, employee compensation, working conditions, employee rights to form unions, and the use of child labor; or (b) the bidder's failure to provide information sufficient for boards of education to determine the labor standards applicable to the manufacture of the apparel or sports equipment.
- J. Evaluations: The District reserves the right to apply the case law and interpretations developed under GML Section 103 in connection with the evaluation of submissions herein including, without limitation, with respect to determining whether a proposer is a responsible vendor.
- K. Forms: All RFPs and RFQs shall contain a statement of non-collusion and a disclosure form or background questionnaire which must be reviewed by the Procuring Officer when evaluating the submission.

- L. Approvals: Contracts proposed in accordance herewith remain subject to receipt of all applicable approvals including, without limitation, that of the City Council, BOCS, and/or Board.
- M. Preferred Source: Pursuant to New York State Finance Law (see Section 162), in order to advance special social and economic goals which accords certain providers with preferred source status, it is expressly acknowledged that procurements of commodities and/or services, when available in the form, function, and utility required by the City or the District, are required to be made from preferred sources and are not subject to competitive procurement requirements.
- N. Electronic Submission: In accordance with New York State law, the District may elect to accept electronic submission of bids (pursuant to GML Section 103), RFPs, and RFQs.
- O. Compliance with Law: Except for procurements made pursuant applicable law including, without limitation the GML, NYS Finance Law, or Correction Law, it is expressly acknowledged that alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals, written quotations, verbal quotations, or any other method of procurement in accordance herewith.

The unintentional failure to comply with the provisions herein or the GML will not be grounds to void the transaction or give rise to a cause of action against the City, the District, or any of their respective officers, elected officials, or employees.

If any provision herein is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this regulation shall in no way be affected, impaired, or invalidated, and, to the extent permitted by applicable law, any such provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable.

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