

Emmaus Public Library Bid & Procurement Policy when using Federal Funds

Purpose

The purpose of these procedures is to establish standards and controls for the purchase of goods and services for the **EMMAUS PUBLIC LIBRARY** (hereafter known as the Library) when federal funds are being used. These procedures are intended to facilitate full and open competition and cost-effective purchases, as well as to ensure proper accountability.

Expenditure Authorization

All expenditures must be authorized in the Library's approved budget. New budget appropriations must be approved by the Library board concurrently with contract approval, and will be reflected in any periodic budget updates.

Purchase Method¹

When using federal funds, the Library is generally expected to engage in competitive procurements compliant with applicable federal regulations unless the requirements for a sole source procurement are met under federal regulation.

The methods of competitive procurement under federal regulation are (a) procurement by micro purchase, (b) procurement by small purchase, (c) procurement by sealed bids, and (d) procurement by competitive proposal.

- a. Generally, procurement by micro-purchase may occur for the acquisition of supplies or services where the aggregate amount does not exceed \$3,500. Micro-purchases may occur without soliciting competitive quotations if the price is reasonable. To the extent practical, the Library shall distribute micro-purchases equitably among qualified suppliers.

- b. Procurements by small purchase procedures may apply where purchases do not exceed the simplified acquisition threshold (currently, \$150,000). Small purchase procedures permit simple and informal procurement methods, provided price or rate quotations are obtained from an adequate number of qualified sources.

- c. For purchases over \$150,000, sealed bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid,

¹ The following describes the five procurement methods currently allowed under the federal UG. Each entity must have documented procurement policies which provide detail on the process by which all purchases are made and which are tailored to state law or other restrictions applicable to the specific type of Library. Note applicable dollar thresholds for purchases using federal funds that are stated in these draft procedures may change periodically and should be regularly reviewed. Where more restrictive requirements of state law may be applicable, the more restrictive state procedure must be followed.

conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.²

d. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price, or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- Proposals must be solicited from an adequate number of qualified sources; and
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Noncompetitive Proposals

Procurement by noncompetitive proposals means procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

1. The item is available only from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. An emergency exists whenever the time required for the Board to act in accordance with regular procedures would endanger life or property or threaten continuance of existing school classes.
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the district.
4. After solicitation of a number of sources, the district determines the competition is inadequate.

Full and Fair Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 CFR § 200.319. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids, or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include, but are not limited to:

² The sealed bid method is the preferred method for procuring construction, and is feasible if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

1. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Requiring unnecessary experience and excessive bonding.
3. Noncompetitive pricing practices between firms or between affiliated companies.
4. Noncompetitive contracts to consultants that are on retainer contracts.
5. Library conflicts of interest.
6. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement.
7. Any arbitrary action in the procurement process.

Cost Analysis

The Library performs a cost or price analysis in connection with every procurement action involving federal funds in excess of \$150,000, including contract modifications (2 CFR §200.323(a)). A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

When performing a cost analysis, the Library negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the following aspects:

- Complexity of the work to be performed.
- The risk that is borne by the contractor.
- The contractor's investment.
- The amount of subcontracting
- The quality of its record of past performance
- Industry profit rates in the surrounding geographical area for similar work (2 CFR §200.323(b)).

Minority Businesses, Women's Business Enterprises, Labor Surplus Area

Firms

The Library must take necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (2 CFR §200.321)

1. Placing qualified small, minority, and women's business enterprises on solicitation lists.

2. Assuring that small, minority, and women's business enterprises are solicited whenever they are potential sources.
3. Dividing total purchasing requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises.
4. Establishing delivery schedules, where the requirement permits, to encourage participation by small and minority businesses and women's business enterprises.
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Requiring the prime contractor, if subcontracts are let, to take the affirmative steps listed above.

Geographical Preferences Prohibited

The Library must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed 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 geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Prequalified Lists

The Library must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current, and include enough qualified sources to ensure maximum open and free competition. Also, the Library must not preclude potential bidders from qualifying during the solicitation period.

Solicitation Language

The Library must ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly

stated, and identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Avoiding Acquisition of Unnecessary or Duplicative Items

The Library must avoid the acquisition of unnecessary or duplicative items. Additionally, consideration must be given to consolidating or breaking out procurements to obtain a more economical purchase; and, where appropriate, an analysis must be made of leases versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with federal funds.

Use of Intergovernmental Agreements and Cooperative Purchasing

To foster greater economy and efficiency, the Library enters into state and local intergovernmental agreements, where appropriate for cooperative purchasing or use of common or shared goods and services; as permitted by the Intergovernmental Cooperation Act and the

Commonwealth Procurement Code. (53 Pa. C.S. Ch. 23; 62 Pa. C.S. Ch. 19)

When procuring supplies or services for federally funded purposes to which the UG applies, the Library shall verify that the Library conducting the procurement pursuant to such agreements complies with the applicable procurement methods, requirements, and standards of the UG as outlined in this procedure.

Use of Federal Excess and Surplus Property

The Library considers the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

Debarment and Suspension

The Library awards contracts only 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.

The Library may not subcontract with or award subgrants to any person or company who is debarred or suspended. For all contracts over \$25,000, the Library verifies that the contractor with whom the Library intends to do business is not excluded or disqualified. (2 CFR Part 200, Appendix II, and 2 CFR §§ 180.220 and 180.300)

Maintenance of Procurement Records

The Library must maintain records sufficient to detail the history of all procurements.

These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, the basis for the contract price (including a cost or price analysis), and

verification that the contractor is not suspended or debarred. Maintenance of records of procurement will be governed by policy and the Library's established records retention schedule.

Time and Materials Contracts

The Library may use a time and materials type contract only: (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the

Library is the sum of: the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency.

Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk.

Further, the Library must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Settlement of Issues Arising Out of Procurements

The Library alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Library of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Protest Procedures to Resolve Dispute

The Library maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency. Protest procedures will be acted on in accordance with current state law and regulations, established Library administrative regulations, and the advice of the solicitor.