



**WINDHAM SCHOOL  
DISTRICT**

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February 12, 2020

## **OPERATING PROCEDURES**

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**SUBJECT:** PURCHASING POLICY

**AUTHORITY:** Tex. Educ. Code §§ 19.004-19.007, 45.201-45.209; Tex. Gov't Code §§ 402.0212, 573.001-573.084, 2155.001-2155.510, 2161.001-2161.253, 2262.004, 2254.001-2254.154; Tex. Penal Code §§ 36.01-36.10; 2 CFR part 200; 34 CFR Parts 75-77, 79, 81, 82, 84, 86, 97-99; 34 Tex. Admin. Code §§20.82, 20.207, 20.281-20.298 20.306; WBP 2.00, 3.02

**REFERENCE:** *State of Texas Procurement and Contract Management Guide*, Tex. Compt. Pub. 96-1809

**APPLICABILITY:** Windham School District

**POLICY:**

The WSD Purchasing Office is part of the Department of Business Services and is responsible for the organization and administration of the purchasing functions for the district in accordance with the authority delegated by the superintendent and Board of Trustees.

**DEFINITIONS:**

These definitions are meant only for this policy and may not apply in other contexts.

“Award” is the act of accepting a bid, thereby forming a contract between WSD and a bidder.

“Best Value” is defined as procuring goods and services at the most advantageous combination of factors such as cost, quality, expertise, etc. through competitive bidding.

“Bid” is an offer to contract with WSD, submitted in response to a bid invitation.

“Board of Trustees” is the governing board of WSD.

“Emergency Purchase” is a situation requiring WSD to make the procurement quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to WSD. The time to remedy the issue may be so short as to preclude the normal bidding process.

“Goods” are supplies, materials, and equipment.

“Historically Underutilized Business (HUB)” is a historically underutilized business as defined by the Tex. Gov't Code § 2161.001.

“Purchase Order” is a document used to authorize the purchase of goods and services.

“Purchasing Cooperatives” are established between school districts, regional service centers, county departments of education, and other local government cooperatives to obtain goods and services at optimal value.

“Requisition” is a request submitted to the purchasing department from a user requesting the purchase of goods or services.

“Service” is the act of providing skilled or unskilled labor or professional work. This does not include professional or consulting services as defined by the Tex. Gov't Code §2254, services of an employee of an agency, or services of public utilities.

## **DISCUSSION:**

- I.     The primary function of the Purchasing Office is to meet the product and service needs of the WSD by:
  - A.     Obtaining goods and services for the WSD at the best value while complying with applicable federal, state, and local laws as well as WSD policies and guidelines.
  - B.     Promoting competition among bidders.
  - C.     Educating and informing all vendors regarding WSD rules, regulations, and methodologies that are applied for the basis of bid awards.
  - D.     Educating and informing WSD staff concerning WSD purchasing policy and procedures for the procurement of goods and services.
- II.    The purchasing procedures in this policy are intended to comply with all applicable statutes, regulations, rules, and policies. In the event of a conflict of omission, the applicable statute, regulation, or rule will prevail over this policy.

**PROCEDURES:****I. Ethics and Professional Standards**

- A. WSD employees may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur an obligation of any nature that is in substantial conflict with the proper discharge of the officer or employee's official duties. WSD purchasing staff with the authority to purchase must sign a Conflict of Interest statement each fiscal year. One copy of the signed statement goes to the employee, one copy is filed with the employee's supervisor, and one copy filed in the employee's personnel file.
- B. Nepotism is a form of conflict of interest that involves an explicit act of using one's position to favor a relative. A conflict is presumed to exist when awards are made to a person within the third degree of consanguinity or within the second degree by affinity. The definitions found in WBP-07.42, *Nepotism* apply to this policy.
- C. WSD employees who exercise discretion in connection with contracts, purchases, payments, claims or other financial transactions may not accept a benefit from a person who is interested in or likely to become interested in such a transaction.. This excludes gifts less than \$50 as long as the gift is not solicited and not offered or accepted in exchange for any action or decision on the part of the public servant. Any attempt to offer a gift in excess of \$50 to a WSD employee must be reported to the employee's supervisor.
  1. An employee may accept a benefit that is a small token, routinely produced, and available to the general population from a trade show or convention.
  2. If there is any question about the ethical way to address a benefit received from a third party, an employee must consult their supervisor.
- D. Occasionally, vendors may send promotional items or free samples to the Purchasing Office. It is appropriate to accept these items as long as they are handled in the correct manner.
  1. The employee that receives the items should take them to their supervisor so they can be distributed in a fair and consistent manner.
  2. These items will be reviewed by a committee of supervisors within the Department of Business Services to determine the best way to disperse the items.

**II. Procurement Method Identification**

Contract awards will only be made to responsive vendors providing best value to WSD.

A. Procurement Types and Methods Applicable to WSD

1. If the purchase is subject to a Declaration of Disaster by the Governor, follow the guidelines within the Texas Disaster Relief Act of 1975.
2. State Surplus Property Programs

WSD may utilize State Surplus Property Programs. Competitive bidding is not required for purchases through the State Surplus Property Program.

3. Texas Correctional Industries (TCI)

TCI is a division of the Texas Department of Criminal Justice (TDCJ) that manufactures goods and services for purchase by Texas governmental entities. WSD may purchase goods made by and services offered by TCI without competitive bidding.

4. Texas Purchasing from People with Disabilities Program

The Texas Workforce Commission (TWC) oversees the Purchasing from People with Disabilities Program. WSD may purchase goods made by and services offered by an affiliated Community Rehabilitation Program who employs individuals with disabilities to develop products or services for the Program. Competitive bidding is not required for purchases under this section.

5. Bank Depository Contracts

- a. A depository contract must have a primary term of two years and may be extended without competitive bidding for three additional two-year terms.
- b. The depository must be a bank located in the state of Texas and insured by the Federal Deposit Insurance Corporation.
- c. Request for Bank Depository Bid or Proposals:

Not later than the 30th day before the date WSD's current depository contract expires, WSD must solicit bids or proposals from qualified banks. The process for selecting a depository bank is based on the process applicable to independent school districts provided in Chapter 45, Texas Education Code.

- d. Criteria for awarding a depository contract bid:

- i. The interest rate bid or proposed on time deposits;

- ii. Charges for keeping district accounts, records, and reports and furnishing checks;
- iii. The ability of the bank to provide the necessary services and perform the duties as school district depository; and
- iv. Any other matter that would be to the best interest of WSD.

6. Legal Services

A contract for outside legal services must have prior written approval from the superintendent and the Office of the Attorney General in compliance with Tex. Gov't Code §402.0212.

7. Information Technology

Purchases for information technology, such as Automated Information Systems products or services including, but not limited to, computer hardware, software or telecommunications may use contracts established by the Texas Department of Information Resources (DIR). Competitive bidding is not required for items purchased from DIR contracts.

- 8. Interagency contracts are governed by the Interagency Cooperation Act, Chapter 771, Government Code. WSD may contract with state agencies for the provision of goods or services through an interagency contract without competitive bidding. Interagency contracts must be in writing and specify:
    - a. the kind and amount of services to be provided;
    - b. the basis for computing reimbursable costs; and
    - c. the maximum cost during the period of the contract.
  - 9. Interlocal contracts are governed by the Interlocal Cooperation Act, Chapter 791, Government Code. WSD may contract with a local government for goods, services, or to provide governmental functions through an interlocal contract without competitive bidding. Interlocal contracts must be in writing and state the purpose, terms, rights, and duties of the parties; and fairly compensate the performing party for the services or functions performed.
- B. WSD may purchase goods and services through contracts established by another state agency, federal government purchases, or interstate compacts and cooperative agreements. See the contract for procedures for the use of the contract. WSD may utilize contracts with regional education service centers, institutions of higher

education, county departments of education and other local governments to provide goods or services. If a vendor provides a price that is less than the price established under a cooperative agreement, WSD may purchase at the lower price provided it does not conflict with any terms of the cooperative agreement. Competitive bidding is not required for items purchased under this section.

- C. A proprietary purchase is one where the specifications or conditions of the proposed purchase are proprietary to a sole source vendor and do not permit an equivalent product or service to be supplied. All proprietary purchases over \$10,000 must be approved by the superintendent or designee and must include a proprietary purchase justification that includes the following information to document best value to WSD:
  - 1. The vendor must provide a sole source letter describing their product or service and justifying why they are the sole source provider;
  - 2. WSD must document why specifications for the product or service are written as they are, and why those specifications are necessary to accomplish the district's goal for the procurement; and
  - 3. WSD must document the reason that no other competing products or services will satisfy the need of the district and provide examples of the technical, practical, or operational risks that would occur if competing products or services were selected;
- D. If the purchase is for employee overnight lodging where the district has a need to enter into a contract to secure lodging for a WSD training, conference, or other WSD employee group gathering, a quote to include lodging rates, room availability, and a list of other available amenities from at least three lodging establishments in the geographic region of the event should be obtained. The purchasing office will organize a committee to evaluate the quotes from the lodging establishments. If fewer than three vendors are available in the geographic region, the requirement to obtain three quotes is waived. The committee must document this fact during the selection process. Overnight lodging rates should follow the state maximum lodging rates. The committee must review the quotes and select the awarding vendor utilizing the best value standards in section IV. The committee must include the department director of Business Services. Purchases under this section should utilize a master account with the lodging establishment under WSD's name and not an individual employee's name. The procurement methods described in Section II(E) do not apply to overnight lodging.
  - 1. Room rental for meeting space can be included in a hotel quote when the committee process is used to evaluate three or more hotel options for a gathering. The committee selection process may not be used if the total amount for the room rental (separate from lodging) exceeds \$10,000. If room rental (excluding lodging) is expected to exceed \$10,000, the purchase

should follow the informal or formal solicitation process, whichever is applicable.

2. If a meal(s) is provided as part of the room rental, the contracted meal rate per person may not exceed the state maximum meal rate allotted for the included meal and location. The maximum amount reimbursed for employees through the travel voucher process will be reduced by the state maximum meal rate that was provided.
  3. The WSD professional development flowchart in Attachment A must be used to meet the requirements of this section.
- E. All other purchases except emergency purchases use the listed procurement methods based on dollar amount of the purchase. Purchases may not be split to avoid using the prescribed method.

<u>For purchase</u>	<u>Procurement Method</u>
\$0.00 to \$9,999.99	Competitive process not required
\$10,000.00 to \$25,000.00	Informal Competitive Solicitation
greater than \$25,000.00	Formal Competitive Solicitation

### III. Procurement Methods

#### A. Informal Competitive Solicitation

The district must solicit at least three informal bids, including at least two bids from historically underutilized businesses (HUBs), on all purchases of goods and services over \$10,000 but not more than \$25,000. The district must, to the extent possible, solicit bids from vendors in the HUB Directory. If the district is unable to locate two HUBs, it must make a note in the contract file. The acceptable methods for receiving informal bids are hand delivery, direct mail, facsimile transmission, email, telephone, or internet website.

#### B. Formal Competitive Solicitation

If the total value of a solicitation is greater than \$25,000, a formal written competitive sealed bid method must be used to solicit bids. If advantageous, a bid request may be posted on the WSD website. In addition to posting the solicitation of sealed bids, the informal competitive solicitation process can be followed to notify and solicit additional sealed bids from vendors.

#### IV. Best Value Standard

- A. In determining the best value for WSD, the purchase price and whether the goods or services meet specification are the most important considerations. However, WSD may consider other relevant facts, which must be included in the bid request. Other relevant facts include but are not limited to:
1. installation costs;
  2. life cycle costs;
  3. the quality and reliability of the goods or services;
  4. the delivery times;
  5. indicators of probable vendor performance under the contract such as past performance, vendor's financial resources and ability to perform, vendor experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
  6. the cost of employee training; the effect of the purchase on district productivity;
  7. the vendor's anticipated economic impact on the district; and
  8. other factors to determine the best value for the district.

#### B. Tie Bids

1. Tie bids occur when two or more bids, after evaluation, are determined to be equal. Additional factors contained in 34 Tex. Admin Code, §20.306 are used to determine to whom the bid is awarded.
2. If two or more bids remain tied after applying the additional factors, the bid is awarded by drawing lots, by tossing a coin, or drawing names with two witnesses to oversee the actual occurrence and initial bid tabulation.

#### V. Purchaser Training & Certification

To keep up to date with purchasing guidelines and best practices, WSD purchasers must attend state and school district training courses.

#### VI. Signing Authorities

The superintendent designates signing authorities for budgeted funds within WSD as necessary.

VII. General

- A. It is the goal of the Purchasing Office to process all requisitions as they are received in a timely manner.
- B. WSD employees should plan purchases to allow time for the purchasing process and receiving and shipping of goods and services.
- C. The Department of Business Services will communicate end-of-year purchasing deadlines to all WSD employees each year for open market, procurement card, and warehouse purchases.

VIII. Procurement Card Guidelines

- A. The Department of Business Services administers a procurement card program for the district. The purpose of the procurement card program is to ensure an expedient, cost-effective method of making and paying for small-dollar purchases. The program is designed as an alternative to the traditional purchasing process for equipment and supplies and is intended to complement the traditional purchasing and payment processes to achieve best value for the district.
- B. All procurement card purchases must comply with the laws of the State of Texas and the policies and procedures of WSD.
- C. The Department of Business Services is responsible for creating and updating a user's guide for the procurement card program and providing communication and training related to the program.
- D. All procurement card guidelines must be strictly adhered to by WSD employees.

IX. WSD Contracts

- A. Contracts for the purchase of goods and other non-service purchases  
This section applies to the creation of a contract to detail the terms and conditions of a non-service related purchase.
  - 1. This section applies after a purchase has been awarded to a vendor.
  - 2. The purchasing office in conjunction with the department requesting the purchase determines if a contract is required.

Factors used to determine if a purchase requires a contract:

- a. The intricacies of a purchase are such that they cannot be outlined effectively through the standard purchase order document process.

- b. The timeline to fulfill a purchase extends beyond one fiscal year.
  3. The purchasing department and the department requesting the purchase will work with the vendor to develop a contract draft.
  4. The purchasing office will assign a contract number to the contract.
  5. The contract must be routed for approval to the department requesting the service, the general counsel, and the Office of the CFO.
- B. Contracts for Services
- This section applies to the creation of a contract for services to WSD.
1. This section applies before a purchase has been awarded to a vendor.
  2. When a department identifies a need for contracted services, the contract formation process provided in Attachment B should be followed.
- C. The CFO is the designated signing authority for all WSD purchasing contracts.
1. The CFO is only authorized to execute a WSD contract after the signatures of signing authorities for budgeted funds have been received.
  2. The superintendent may select an alternative signing authority as needed.



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