

FREDERICK COUNTY PUBLIC SCHOOLS	Reg. No. 200-07
Subject: PURCHASING REGULATIONS	Issued: 2/1/82
Preparing Office: Office of the Superintendent	Amended: 7/1/22

I. Policy 205.2

II. Procedures

A. Definitions - For the purpose of this regulation, the following definitions are provided:

1. Annotated Code

The official compilation of the statutory laws of Maryland.

2. Bidder

A person or company that submits a response to an invitation for bid (IFB), invitation for quote (IFQ), request for proposal (RFP) or request for quotation (RFQ).

3. Competitive Sealed Bid

The preferred method for acquiring goods, services and construction projects in which award is made to the lowest responsive and responsible bidder, based solely on the response to the criteria set forth in the invitation for bid.

4. Competitive Sealed Proposal

The preferred method for acquiring primarily goods or services in which factors other than price are used for evaluation.

5. Code of Maryland Regulations (COMAR)

The official compilation of all administrative regulations issued by agencies of the state of Maryland.

6. Contract

A legally binding agreement between two parties for the exchange of goods or services for money or other consideration.

7. Contract Administrator

The person who shares in the development of the statement of work and oversees the actions that must be taken to assure compliance with the terms of the contract after the contract is awarded.

8. Contract Manager

The person who oversees the actions that must be taken to prepare, issue, evaluate and recommend award.

9. Designee

An authorized representative to act on behalf of the Superintendent.

10. eMaryland Marketplace Advantage (eMMA)
The state of Maryland's eProcurement platform.
11. Expense Reimbursement
The repayment to an employee for reasonable, actual and necessary out-of-pocket business expenses. (Reference Purchasing Operating Procedure #OP011)
12. Green Product
A product that performs well and has positive health and environmental attributes.
13. Invitation for Bid (IFB) or Invitation for Quote (IFQ)
A formal request to prospective vendors soliciting price quotations or bids.
14. Pre-bid Conference / Pre-proposal Conference
A meeting held with prospective bidders prior to the official opening date of the bid or proposal.
15. Procurement Card (P-Card)
A credit card, issued to an authorized Frederick County Public Schools (FCPS) user, to facilitate purchases, expedite payment to vendors and improve internal administrative cost controls.
16. Purchase Order
A written document, processed through the FCPS electronic procurement system that authorizes an outside vendor to supply materials, supplies, and services.
17. Purchasing Agent
An employee of the Purchasing Department who manages the contracts and agreements.
18. Purchase Requisition
A written or computerized request to the Purchasing Department for the procurement of goods or services from suppliers.
19. Request for Quotation (RFQ)/Request for Proposal (RFP)
An RFQ is a solicitation method when the estimated value of a purchase is less than the \$50,000 limit authorized by Maryland statute. An RFP is used when the value of the purchase exceeds \$50,000.
20. Responsive Bidder
A vendor who has submitted a bid which conforms in all material respects to the requirements stated in the invitation for bid.
21. Responsible Bidder
A vendor who has the capability in all respects to perform fully the contract requirements, and the experience, integrity, perseverance, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

22. Solicitation

A request for a priced offer to sell goods or services.

23. Vendor

A business or person who sells goods or services. They may or may not be a bidder.

24. Voucher

A written document, processed through the FCPS electronic procurement system that authorizes reimbursement payment. (Reference Purchasing Operating Procedure #OP009)

B. Responsibility

1. The Purchasing Department will be responsible for procuring new school construction, materials, instructional resources, equipment, supplies, and/or services essential to the operation of the school system.
2. The Purchasing Department will conduct all procurement transactions in accordance with federal and state statutes and the policies and regulations of the Board of Education and negotiated agreements.
3. Public school procurements are governed by the Education Article, primarily Division II, Title 5, Subtitle 1, Section 5-112 of the Annotated Code of Maryland.
4. Best practices are further guided by the State Finance and Procurement Article (Division II, the Annotated Code of Maryland), Title 13, Title 21, and Title 23 of the Code of Maryland Regulations (COMAR), and other local, state or federal guidelines as may be mandated by the use of targeted funding.
5. All negotiations with contractors or vendors shall be conducted by or with the approval of the Purchasing Department.
6. All agreements with contractors or vendors involving financial consideration of public funds in exchange for materials, instructional resources, equipment, supplies, and/or services must be made on purchase orders, agreements, or contract forms that specify the contractual obligations; be reviewed by the Purchasing Manager; and be signed by the Superintendent of Schools or authorized representative.

C. Function of the Purchasing Department

The function of the Purchasing Department is to procure, without favor or prejudice, the proper amount of the desired item and/or service at the best possible price, or lowest total cost of acquisition, and to have it available when needed. Every procurement will be made considering quality, safety, price, delivery, historic vendor performance.

D. Procurement Types

There are various types of procurements: competitive sealed bids; competitive sealed proposals; non-competitive negotiation; single and sole source; emergency or expedited procurement, and small procurements.

1. Competitive Procurements

- a. When the cost of any school improvements, supplies, equipment, or services exceeds \$25,000 but is not more than \$50,000, a request for quotation will be issued to at least three vendors and documented.
- b. Quotations may be obtained by departments other than the Purchasing Department, but will be subject to review and verification by the Purchasing Department. The Purchasing Department shall be contacted for advice regarding the procedures for obtaining and documenting quotations. Bidding of procurements exceeding \$50,000 shall occur only through the Purchasing Department.
- c. Procurement standards involving Federal grant money will follow §200.317-§200.326 General Procurement Standards of the Uniform Administrative Requirements and the same documented regulation (above).
- d. Competitive sealed procurements occur when bids or proposals are solicited from multiple vendors through an advertised bidding process for the purchase of any school building, school improvements, supplies, equipment (MD CODE ANN., Education §5-112) or services exceeding \$50,000. (Board Policy 205.2)
- e. A multi-step format is used when unpriced technical proposals are evaluated before considering cost. Prices may be obtained either with the technical proposal or after the technical proposals have been evaluated and determined to be acceptable. At the discretion of the Purchasing Department, a cost proposal may remain unopened if the technical offer has been evaluated as unacceptable. (MD CODE ANN., State Finance and Procurement §13-103 [2014])

2. Non-Competitive Negotiation

A contract for human, social, or educational services to be provided directly to individuals with disabilities, individuals who are aged, indigent, disadvantaged, unemployed, mentally or physically ill or displaced, or minors may be awarded on the basis of non-competitive negotiation. A request for general expressions of interest shall be published in the same manner as required for an invitation for bids. Discussions shall be conducted with all responsible service providers on a fair and equitable basis. Award may be made by the Superintendent or designee on the basis of these discussions or past program experience such that the award will serve the best interests of the school system. (MD CODE ANN., State Finance and Procurement §13-106 [2014])

3. Single and Sole Source Procurements

- a. Single source procurement occurs when staff actively seeks one supplier although more than one is available.
- b. Sole source procurement is not permissible unless a requirement is available from only one source. (MD CODE ANN., State Finance and Procurement §13-107 [2014]) The determination and the basis for the determination shall be in writing. (COMAR 14.28.08.09)
- c. Single and sole source procurement should occur only on an exception basis through intentional approval. The reasons for the single or sole source procurement shall be documented.
- d. The approval process for single and sole source procurements will be as follows:

<u>Dollar Value</u>	<u>Approved By</u>
Less than \$25,000*	Purchasing Manager
Between \$25,000 and \$50,000*	Purchasing Manager
Exceeding \$50,000	Purchasing Manager, Chief Financial Officer and the Superintendent

- e. The Board shall be informed of single and sole source procurements exceeding \$50,000 that are not handled as competitive quotations or bids.
- f. *Federal grant funded purchases that are sole source procurements shall follow current §200.317-§200.326 General Procurement Standards, and shall be subject to the approvals in (d).

4. Emergency or Expedited Procurement

Emergency repairs qualify as an exception to the state law on bidding. (MD CODE ANN., Education §5-112 [2014]) In such cases, the Chief Financial Officer and the Superintendent, in conjunction with department supervisors involved in the crisis, will be authorized to make single source procurements, when time is of the essence in securing the building, occupants or nearby residents. If time permits, solicitation of competitive quotes will be obtained. The Purchasing Manager will be involved in this decision-making, if available, or notified, when possible.

Records will be maintained and procurement decisions documented and retained by the Purchasing Department. The Board of Education and Superintendent are to be notified of the status of the situation and the need for single source procurements over \$50,000. (Board Policy 205.2)

5. Small Procurements

A small procurement is defined as a purchase less than \$50,000. Procurement for multiple quantities, services, or similar items within a family of goods or services may

not be divided into smaller purchases with the intent of avoiding competitive procurement. (MD CODE ANN., State Finance and Procurement §13-109 [2014])

E. Acquisition Methods

All purchases will be made through the Purchasing Department using the electronic procurement system or procurement card.

All deliveries for materials (i.e. Materials of Instruction [MOI], supplies, books, or other) shall be delivered to an FCPS location.

F. Source Selection for Procurements Requiring Special Consideration

1. Technology

- a. The state of Maryland has adopted a streamlined procurement process for information technology services that provides for the qualification of an offeror in one or more categories of information technology services. Information technology services are defined by the State as all electronic information processing hardware and software, including maintenance; telecommunications; and associated consulting services. (MD CODE ANN., State Finance and Procurement §3A-301 [2014] and MD CODE ANN., State Finance and Procurement §13-402 [2014])
 - b. All FCPS technology based instructional products (instructional software, online resources, and computer based equipment) must be consistent with the federal Rehabilitation Act, Maryland Subpart B Technical Standards, Section 508, for accessibility by students with disabilities unless doing so would fundamentally alter the nature of the instructional activity or result in undue financial and administrative burdens. Requests for bids, proposals, procurement contracts, and grants will follow established procedures for evaluating compliance to accessibility standards in all purchase decisions. (MD CODE ANN., State Finance and Procurement §3A-311 [2014])
 - c. Computer-based technology means the computer hardware or peripherals used by teachers and students in the delivery of an instructional program. FCPS has adopted standards for computer hardware and peripherals, and the Purchasing Department, in cooperation with Technology Services will establish prices and procedures based on these standards. (FCPS Regulation 400-31)
 - d. Instructional programming means the full range of audio and video text, graphics, or additional state-of-the-art communications distributed through interactive, command and control, or passive methods for the purpose of education and instruction. FCPS interprets instructional programming as exempt from competitive purchasing (MD CODE ANN., Education §7-901 [2014])
2. Green product cleaning supplies shall be procured to the extent practicable and economically feasible. These supplies are defined as being preferable because they have positive health and environmental attributes. (MD CODE ANN., Education §5-112 [2014])

3. FCPS has the authority to establish a selection process based on a competitive procedure to obtain architectural/engineering, school construction, renovation, and major repair services. (COMAR 23.03.03.03)
4. Steel is to be domestically sourced to the maximum extent practicable. (MD CODE ANN., State Finance and Procurement §17-303 and §17-306 [2014]) A waiver may be granted if the Superintendent or his/her designee determines that:
 - a. The price of the American manufactured goods exceeds the price of a similar manufactured good that is not manufactured in the United States by an unreasonable amount;
 - b. The item or a similar item is not manufactured or available for purchase in the United States in reasonably available quantities;
 - c. The quality of the item or a similar item manufactured in the United States is substantially less than the quality of a comparably priced, similar and available item that is not manufactured in the United States; or
 - d. The procurement of a manufactured good would be inconsistent with the public interest. (MD CODE ANN., State Finance and Procurement §14-416 [2014]).
5. Cooperative purchasing agreements facilitate a local educational agency (LEA) to participate in procurements that are awarded by other public entities, or by intergovernmental purchasing organizations, for the purpose of expediting procurement and encouraging pricing efficiencies in bidding, as long as the lead agency for the contract follows public bidding procedures. (FCPS Regulation 200-22 and MD CODE ANN., State Finance and Procurement §14-416 [2014])

G. Exceptions to Competitive Procurements

Exceptions to competitive procurement, by state definition, apply to the purchase of books and other materials of instruction, as defined in the State Department of Education Financial Reporting Manual; and emergency repairs. (MD CODE ANN., Education §5-112 [2014])

FCPS interprets instructional software, when used in addition to or in lieu of textbooks or materials of instruction, to be exempt from competitive procurement. Other forms of software will be evaluated for its competitiveness and procured accordingly.

Although exceptions apply, when it is to FCPS's advantage, we may solicit bids or request quotes for any or all categories included as exceptions.

H. Contract Formation Process

1. Advertisements for Competitive Procurements

- a. Competitive procurements are required to be advertised on eMMA. Additionally, they are to be advertised in a medium accessible to the general public, which may include, but is not limited to: a newspaper of general circulation in the region, a trade publication, posting on the school system website and/or television station at least 20 days prior to the date when the bids are to be filed/opened. (MD CODE ANN., State Finance and Procurement §13-103 [2014])

- b. The advertisement for the solicitation shall contain basic information about the procurement, including the dates/times of pre-proposal conferences, opening, MBE requirements and where documents are located for review and downloading.
 - c. A notice of award for procurements exceeding \$50,000 shall be available in eMMA and on the FCPS website not more than 30 days after the execution and approval of a procurement contract. (MD CODE ANN., State Finance and Procurement §13-103 [2014])
2. Terms and Conditions for Procurements
- a. Every solicitation and purchase order contains terms and conditions (T&C) and instructions to bidders (ITB). The Purchasing Department maintains and updates these terms, conditions and instructions to bidders. The Purchasing Manager may consult the Chief Financial Officer and/or legal counsel prior to making changes.
 - b. Large construction bids include special contract documents prescribed by the American Institute of Architects (AIA). The Construction Management Department maintains the AIA standard contract forms.
3. Specification Development
- a. Specifications shall be written to encourage competition. Responsibility for the final accuracy, competitiveness, and suitability of specifications is an integral function of the Purchasing Department. Specifications may be originated by a user/contract administering department; an independent architect, engineer or consultant; another governmental entity; a professional society or association; or the Purchasing Department itself.
 - b. A business or a person who assists the school system in the drafting of specifications, an invitation for bid, a request for proposal, or the selection or award made in response to an invitation for bid or request for proposal may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement. Exemptions apply. (MD CODE ANN., General Provisions §5-508 [2014])
 - c. The requirement for a bidder to submit equivalent products does not apply if it is determined in the written specifications that a particular manufacturer's product must maintain compatibility of service or equipment, must meet the health needs of students, must consider replacement parts or after purchase maintenance, or is to be purchased for resale. (MD CODE ANN., Education §5-112 [2014])
 - d. Products purchased on the basis of qualified product lists go through certain tests for approval or rejection prior to issuance of award.
 - e. Following the opening of bids, tests may be made to determine whether specifications are met or to evaluate the various performance capabilities of competing products.

4. Acceptance of Bids

Bids shall be opened in public at the time and place designated in the invitation for bids and the name of each bidder and amount of each bid shall be announced, recorded and posted. A bid is irrevocable, after bid opening, for the period specified in the invitation for bids unless exceptions have been stipulated in the procurement. (MD CODE ANN., State Finance and Procurement §13-103 [2014])

5. Award of Competitive Procurements

- a. A pre-award, or post-award, conference may be necessary to review specific requirements, expectations, and schedules. Construction procurements or procurements involving highly technical specifications may necessitate a series of progress conferences and checkpoints for action. Documentation of these conferences is required and shall become a part of the contract history.
- b. FCPS does not have local, state or federal preference requirements except when mandated by a targeted funding source.
- c. In the event of tie bids/quotations where all other factors, such as past performance, are considered comparable, the award shall be made to the Frederick County based vendor; the closest Maryland out-of-county based vendor; and the closest out-of-state based vendor, in that order of preference.
- d. The basis of award shall be the lowest responsible bidder submitting a responsive bid that conforms to the specifications established in the solicitation with consideration given to the quantities involved, time required for delivery, purpose for which required, competency and responsibility of bidder, the ability of the bidder to perform satisfactory service, and the plan for utilization of minority contractors, if applicable. (MD CODE ANN., Education §5-112 [2014])
- e. Recommendations, including all bidders who are recommended for award and the reasons for rejection of low bids, shall be submitted to the Chief Financial Officer and/or the Superintendent for review.
- f. Approval of bid awards exceeding \$50,000 will be made by the Board of Education or designee based upon recommendation of staff. Approval of bid awards less than \$50,000 will be made by the Purchasing Manager.
- g. The Board of Education may reject any and all bids and re-advertise for other bids. (MD CODE ANN., Education §5-112 [2014] and MD CODE ANN., State Finance and Procurement §13-103 [2014])
- h. When competition is sought but yields only one offer, the reasons for recommending acceptance of a single offer will be documented in the recommendation as part of the routine recommendation and review process.
- i. If, after competitive sealed bids have been opened, the Purchasing Manager determines that only one responsible bidder has submitted a responsive bid, the

procurement contract may be negotiated with that one bidder as sole source procurement. (MD CODE ANN., State Finance and Procurement §13-103 [2014])

6. Protests and Disputes

- a. The Purchasing Manager or designee (when the Purchasing Manager administers the bid being protested) shall attempt to resolve, informally, all protests of bid award recommendations. Vendors are encouraged to present their concerns promptly to the buyer specialist for consideration.
 - (1) The actual or prospective bidder, offeror, or contractor shall submit their concern in writing, addressed to the Purchasing Manager. It shall include the following:
 - Name, address, contact information of the protestor;
 - Statement of reasons for the protest;
 - Supporting documentation to substantiate the claim;
 - The remedy sought.
 - (2) The protest must be received by the Purchasing Manager at least two calendar days prior to the date of the Board of Education meeting at which the recommendation will be presented. It is the vendor's responsibility to ascertain the date and time of award.
 - (3) A vendor who does not file a timely protest before the contract is awarded by the Board of Education is deemed to have waived any objection.
- b. The Purchasing Manager shall inform the Chief Financial Officer and/or general counsel upon receipt of the protest, and shall confer with them prior to the issuance of a decision regarding disputes of contracts or awards valued at \$50,000 or above.
- c. The Purchasing Manager shall issue a decision in writing.
- d. Should the protestor disapprove of the Purchasing Manager's decision, they have the right to address the Board of Education during the public comment section of the same board meeting where the award recommendation is scheduled for award.
- e. The Board of Education's decision is deemed the final action at the local level.
- f. A bidder may appeal a decision of the Board directly to the Maryland State Board of Education in accordance with Board Policy 105.11 and Maryland law.

I. Contract Management and Administration

1. The Purchasing Manager shall appoint a purchasing agent as a contract manager for each bid/proposal. The contract manager has the authority to manage the terms and conditions of the contract.
2. A lead contract administrator will be assigned for each bid/proposal. A contract administrator has the primary responsibility of overseeing the actions that must be taken to assure compliance with the terms of the contract after the award of the contract.
3. The contract manager shall: (a) identify potential bidders; (b) prepare bid specifications in collaboration with the contract administrator; (c) issue contract amendments; (d) coordinate vendor interviews, product/service demonstrations and inspections of vendor facilities; and (e) maintain documentation for auditing purposes. The contract manager and contract administrator will have shared responsibility for defining the scope of work and evaluating proposals.
4. The primary method of contract completion is the approval of the invoice for final payment. Construction bids define a more involved process of payment approval. Contracts with indefinite delivery quantities (IDQ) have a series of invoices issued against them. The Accounting Department is not authorized to make payment without receipt of authorization. Deviation in invoicing from the encumbered amount is not to be accepted without written authorization from the Purchasing Department or, in the case of construction contracts, from the Construction Management or Maintenance and Operations Departments.

J. Quality Assurance

1. Quality assurance as defined by the National Institute of Governmental Purchasing (NIGP) is a planned and systematic pattern of actions necessary to provide adequate confidence that products and services conform to established technical requirements and achieve satisfactory performance.
2. The development of a quality working relationship between FCPS and the supplier begins with the pre-bid/proposal conference. This conference offers a forum for discussion of the scope of work, terms and conditions, and specifications. Pre-bid/proposal conferences are recommended to be held prior to the opening of all competitive procurements as an extension of the advertising process. The objective of this conference is to give all interested vendors an opportunity to ask questions regarding the procurement and to make suggestions for changes, if warranted. Pre-bid/proposal conferences are required for competitive procurements exceeding \$100,000 (COMAR 21.05.02.07), and the information from the conference is to be recorded and made available to the potential bidders via addendum.
3. Major activities of quality assurance are: standardization, specification writing, inspection, quality control, safety, and testing. The Purchasing Department relies upon complete and timely documented information (negative and positive) from the ultimate users of the products and services that it procures. Personal preference is not

appropriate in governmental purchasing. User complaints will be reviewed and given consideration in making procurement decisions.

4. Standardization of specifications shall be developed for items with a similar function or that are procured frequently. This allows FCPS to establish standardized performance and quality levels for common usage with the intent of creating buying leverage and reducing acquisition and maintenance costs.
5. Timeliness is critical in the inspection and acceptance of materials, supplies, equipment, services and construction activities, and in the processing of receiving reports. This requires the cooperation of user departments, inspectors, the Purchasing Department, and the Accounting Department. When noncompliance occurs, it should be documented. Records of non-compliance, actions taken and final resolution shall be documented and will become part of the contract history.
6. At the discretion of the contract administrator, a safety inspection and/or certified performance tests or reports may be required.

K. Vendor Selection/Review/Debarment

1. Bidders are expected to register at eMMA in order to be notified of any FCPS solicitation opportunities.
2. The Purchasing Department will verify that bidders are not on the Federal Debarred Vendors List.
3. Vendor selection, and the maintenance of a bidders list, will be the function of the Purchasing Department. Quality, reliability, responsiveness, and fair pricing are considered when selecting or continuing a vendor on the bidders list. Potential bidders must have adequate financial standing and capacity to perform. Before any purchases are finalized or bid/quotation awards are made, a satisfactory financial report on prospective vendors may be obtained.
4. Vendors who violate the contract terms of procurements and are unwilling or unable to resolve the conflict to the satisfaction of the contract administrator, Purchasing Manager, and the Chief Financial Officer, may be debarred.

L. Sales Representatives in Schools

It is an expectation that sales representatives be referred to the Purchasing Department. As it is necessary for schools to consult sales representatives regarding special or highly technical details of their product, the sales representatives should request such visits through the Purchasing Department. The Purchasing Department may discuss the merits of the products with the applicable curriculum specialist(s), department supervisor(s) or instructional director(s) prior to authorizing visits to the schools. School personnel are not obligated to meet with sales representatives who have been authorized to visit the schools. Non-school based personnel may consult with sales representatives without the prior approval of the Purchasing Department. All fundraising activities are governed by FCPS Regulation 300-38 and Board Policy 426.

M. Contracts Listing

The Purchasing Department will maintain a complete list of awarded contracts on the FCPS internet website. The documents shall include the specification package, including addenda, bid tabulation, and when appropriate, the Board-approved recommendation for award. Non-active bids shall be archived.

N. Records Retention and Review Process

The Annotated Code of Maryland and the Maryland State Department of Education define what documents are considered public records and the procedures for records retention and disposition. Refer to the Records Retention and Disposition Manual for Public Education in Maryland.

O. Public Access to Information

In accordance with FCPS Regulation 200-42 *Public Information Act Requests*, all public information act requests received by the school system should be forwarded to the office of legal services for response. The Chief of Staff and Legal Counsel, as the Superintendent's designee, shall coordinate with the appropriate staff to provide the requested information.

NOTE: Cross-reference FCPS Regulation 200-08 *Minority Business Enterprise Procedures*

Approved:

original signed by

Michael Markoe
Interim Superintendent