

**(ATTACHMENT 2) ACTION ON A REQUEST TO REPLACE ADMINISTRATIVE POLICY
3.09: PURCHASING AND BIDDING REQUIREMENTS**

Administrative Policy 3.09: Purchasing and Bidding Requirements

<i>History</i>	
<i>Previous Coding</i>	
<i>Legal Ref.</i>	
<i>Contract Ref.</i>	
<i>Cross Ref.</i>	<i>Bd. Gov. Policy</i> <i>BG 4.07</i> <i>Asset Protection</i> <i>Admin. Policy</i> <i>6.20</i> <i>Contracts: Employee Benefits and Compensation Plans</i> <i>Admin. Proc.</i> <i>3.09</i> <i>Acquisition of Technology</i>

It is the purpose of this purchasing policy to provide for a uniform and systematic method of purchasing goods and services; to simplify, clarify and modernize the purchasing policies; to ensure fair and equitable treatment of all persons who transact business with the District; to foster broad based competition within the free enterprise system; to maximize the purchasing value of the District; and to provide increased public confidence in the District’s public procurement process. All purchases of goods and services shall be made in accordance with this policy and administrative regulations set forth by the Superintendent.

1. **Policy Application.** This policy applies to the purchase of all goods and all services (whether compensated or not), including leasing, by any MPS school or department, including instrumentality charter schools. Nothing in the policy shall prevent MPS from complying with the terms and conditions of any donation, grant, gift or bequest.

2. **Payments Supported by Appropriate Documentation.** Except as otherwise provided in this policy, all purchases of goods and services must be supported by a purchase order (“PO”) or contract residing within the District’s financial systems (“No PO No Pay Policy”).

3. **Contracting Authority.** The authority to purchase goods and services resides with the Milwaukee Board of School Directors. All procurements must be in the name of the Milwaukee Board of School Directors (except new construction and remodeling contracts which must be in the name of the City of Milwaukee).

4. **Delegation of Authority.**
 For the purpose of this policy, the executive officers of the District shall be understood to consist of the superintendent, the director/board clerk of the office of board governance, and the chief accountability and efficiency officer.
 - A. The Milwaukee Board of School Directors expressly delegates authority to execute contracts binding the Milwaukee Board of School Directors as follows:
 - 1) When associated with maintenance, new construction, or remodeling
 - a. Under \$50,000 – Executed by the Director of Facilities and Maintenance Services.
 - b. \$50,000 and above – Approved by the Board and Executed by the Superintendent, the President of the Board and countersigned by the Comptroller of the City of Milwaukee, and shall be approved as to form and execution by the City Attorney or the attorney retained by the Board under section 119.12(6) of the Wisconsin Statutes.
 - 2) For all other contracts

- a. Under \$50,000
Executed by an executive officer of the District or executed by the Procurement Director or his or her designated staff for contracts that have been requested by principals, chiefs, or department heads.
 - b. \$50,000 and above - Executed by an executive officer of the District and the President of the Board.
- B. The Milwaukee Board of School Directors expressly delegates authority to issue Purchase Orders that bind the Milwaukee Board of School Directors as follows:
- 1) When associated with maintenance, new construction, or remodeling
 - a. Under \$50,000 - The Director of Facilities and Maintenance Services.
 - b. \$50,000 and above - The Director of Facilities and Maintenance Services and approval by the Board.
 - 2) For all other Purchase Orders
 - a. Under \$5,000 - Principals, chiefs, or department heads.
 - b. Under \$50,000 - The Procurement Director or his or her designated staff for purchase requests that have been requested by principals, chiefs, or department heads.
 - c. \$50,000 and above - The Procurement Director or his or her designated staff for purchase requests that have been requested by principals, chiefs, or department heads and approval by the Board.
- C. The Superintendent, principals, chiefs or department heads may electronically approve expenditures for purchase orders or contracts within the District's financial systems.
- D. No contracts shall be enforceable until final budget authority has been approved by the Department of Finance.
5. **Approvals and Reporting.**
- A. The following must be approved by the Board:
- 1) All purchases, including maintenance, new construction, or remodeling, \$50,000 or over, made in a single purchase, unless purchased under a Board approved blanket agreement.
 - 2) All purchases, including maintenance, new construction, or remodeling, within a department or school whose cumulative total by vendor exceeds \$50,000 in a single fiscal year.
 - 3) Vendors selected as the output of a competitive process where the total anticipated awarded amount is expected to exceed \$50,000.
- B. The following shall be reported to the Board by the Finance Department on a monthly basis:
- All purchases of goods and services with vendors whose cumulative fiscal year total of contracts, purchase orders, and direct pays that were not previously approved by the Board exceeds \$50,000 will be reported with the cumulative total for the individual vendor.
- C. Purchases may not be broken into or issued as smaller segments, projects, or purchases in order to avoid any requirement of this policy.
- D. Annually, finance will report to the Board on long term obligations of the District.
6. **Competitive Procurement Types.**
- A. The District shall employ the following competitive procurement processes:
- 1) Informal.
Competitive quotes.
 - 2) Formal
 - a. Competitive sealed bidding.

- b. Competitive sealed proposals (“RFP Process”). Competitive sealed proposals are used only when the Procurement Director determines in writing that the use of competitive sealed bidding is either not possible or practicable.
- B. Competitive Procurements Requirements for the District:
- 1) For purchase of goods and services valued under \$5,000, there are no competitive procurement requirements.
 - 2) For purchases of goods valued at \$5,000 to \$49,999, the method of source selection shall be determined by the Procurement Department provided that a minimum of three (3) competitive quotes are solicited.
 - 3) For purchases of services valued at \$5,000 to \$49,999, the method of source selection shall be determined by the Procurement Department to be either 3 competitive quote, competitive sealed proposal, or a competitive sealed bid.
 - 4) For purchases of goods or non-professional services valued at \$50,000 or over, the method of source selection shall be a competitive sealed bid.
 - 5) For purchases of professional services valued at \$50,000 or over, where performance of the services requires creative and individual talents, scientific knowledge, special skills or training, artistic or professional skills, or, is of a technical or experimental nature, the method of source selection shall be a competitive sealed proposal (“RFP”) whose procedural formality may consider the anticipated amount, with less formality at lower dollar amounts and higher formality at higher dollar amounts.
- C. Competitive Procurement Requirements for Maintenance, New Construction and Remodeling.
- 1) For purchase of goods and services valued under \$5,000, there are no competitive procurement requirements.
 - 2) For purchases of goods or services valued at \$5,000 to \$24,999, the method of source selection shall be determined by Facilities and Maintenance, provided that a minimum of three (3) competitive quotes are solicited.
 - 3) For purchases of goods or services valued at \$25,000 to \$49,999, the method of source selection shall be determined by Facilities and Maintenance, provided that there is public posting.
 - 4) For purchases of goods or services valued at \$50,000 or more, Facilities and Maintenance shall issue a formal competitive sealed bidding or proposals with public advertising. Bid bond equal to 10% of the bid amount must be posted for contracts exceeding \$50,000.
- D. All contracts related to Maintenance, New Construction or Remodeling must be issued through the Division of Facilities and Maintenance Services. Professional Service Contracts associated with maintenance, new construction, or remodeling are considered to be included as a part of the total dollar amount of the project, but facilities and maintenance projects may be let in whole or in part for particular parts of the proposed contract consistent with the bid thresholds outlined in section C 1-4 above.
- E. Competitive procurement processes may serve as the basis for awards for a maximum of three years unless otherwise approved by the Board.
- F. The following are exempt from the requirement of a competitive procurement processes when documentation support and approval is maintained by procurement.
- 1) Purchases made through existing contracts or bids that have been established through a competitive selection process by another local, state or federal governmental agency.
 - 2) Sole Source. One of the following written justifications shall be made as the basis:

- a. One-of-a-kind. The good or service has no available competitive product alternatives.
 - b. Compatibility – The good and service must match an existing brand of equipment for compatibility and the quantifiable or qualitative savings of a sole source award can be demonstrated to benefit the District.
 - c. Replacement Part – The good is a replacement part for a specific brand of existing equipment.
 - d. Continuity – The good or service is needed to maintain continuity and the quantifiable or qualitative savings can be demonstrated to benefit the District.
 - e. MPS Standards – The good or service must comply with an established MPS standard.
 - f. Unique Design – The good or service must meet physical design or quality requirements.
 - g. Delivery Date. Only one supplier can meet the necessary delivery requirements. Nothing in this justification allows for a shrinking of the competitive environment due to poor planning.
 - h. The approval of sole-source requests shall be at the discretion of the Superintendent or his/her designated representative.
- 3) Emergency purchases, as described in section 13 of this policy.
- G. The District reserves the right to reject all bids, responses and quotes when such action is in the best interest of the District.
 - H. Once the bids on maintenance, new construction, or remodeling are opened at the prescribed time, no bidder may withdraw his/her bid for any reason, except as would be allowed by Section 66.0901(5), Wisconsin Statutes. If a bidder, acting in good faith, has by oversight or error made an improvident bid, such bid may be rejected an award made to the next lowest responsive and responsible bidder.
 - I. The Procurement Director may waive any minor irregularities for bids, responses and quotes.
 - J. All bid awards shall be awarded in whole or in part to the lowest responsive and responsible bidder.
- 7. Use of District Blanket Agreements for Purchases.**
- To support the District's goals of maximizing scarce funds, establishing the most competitive environment, leveraging the purchasing power of the District and ensuring equitable terms and conditions for all schools and departments, use of blanket agreements where they have been established is mandatory for the types of goods and services covered. District blanket vendors should be used whenever possible. It is the responsibility of the Procurement Department to review MPS purchasing data and, when to the benefit of the District, issue a competitive procurement process for selection of a blanket vendor. The Department of Finance shall ensure that all goods and services are received before issuing payment.
- 8. Contract Terms.**
- A. All contracts must contain insurance requirements as specified by the MPS Division of Insurance and Risk Management.
 - B. All contracts must contain the vendor name, a written scope of work/services to be performed, including any deliverables, and must set forth the dollar amount of the contract, sufficient information to determine how that amount was calculated, and a budget code.
 - C. The contract must provide for background checks as determined appropriate by the MPS Division of Insurance and Risk Management.
 - D. No contract may be signed wherein MPS agrees to indemnify another party except as

approved in writing by the Procurement Director and the MPS Division of Insurance and Risk Management.

- E. Contracts for the purchase of goods or services shall be for a maximum term of three years. The term must be explicitly set forth in the contract. Waiver of the three-year maximum contract term may be granted by the Board in cases where there would be significant start-up costs to either the District or the vendor which would need to be amortized over a period of longer than three years.
- F. Contracts for the purchase of goods or services must contain provisions that obligate the contractor not to discriminate against any employee or applicant for employment because of race, color, religion, handicap, national origin, sex, age, or socio-economic status. The obligation shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- G. Contracts must include HUB, COIN, and Student Engagement Participation requirements when determined applicable by the District's Manager of Contract Compliance Services.
- H. Contracts for the purchase of goods or services must reflect MPS' encouragement to its contractors to provide health and dental benefits to their employees on a voluntary basis.
- I. In addition to the above requirements, maintenance, new construction and remodeling contracts must contain the following provisions:
 - 1) Contracts shall include payment of prevailing wage rates for hours of daily work and progress payment to the contractor, including any applicable retainage.
 - 2) All contracts must include a written scope of work including drawings and specifications deemed appropriate by the Division of Facilities and Maintenance Services.
 - 3) Performance-and-payment bond equal to 100% of the contract amount must be posted for contracts exceeding \$10,000 and contracts under that amount if deemed appropriate by the Director of the Facilities and Maintenance Services.
 - 4) Contracts shall include appropriate provisions, terms, and conditions that ensure suitable indemnity to the City and Milwaukee Public Schools against loss or expense;
 - 5) Contracts \$50,000 and over must be in the name of the City and the Board.

9. **Change Orders.**

- A. Change orders may be used to extend dates of service to no more than three additional years, to increase the contract amount up to 15% of the contract price; to document non-material changes in scope; and to modify funding source.
- B. Change orders may not be used when the contract has been fully paid and is closed; or there are material changes in the scope services. Any material changes in service require a new contract. The Procurement Director or the Director of Facilities and Maintenance must determine in writing upon user request that a change order is non-material.
- C. All changes in scope of work for existing contracts or purchase/service orders must be documented in writing.
- D. All changes orders must be executed by the Vendor or otherwise documented in writing.
- E. Change orders or modifications to existing contracts whose collective net value exceeds \$25,000 must be reported to the Board by the end user as soon as practicable but no

later than 60 days after project completion. The report should include a complete description of the original scope of work of the contract/order and all modifications as provided by way of the change orders.

- F. A single change order or modification to an existing contract that is collectively net valued at \$50,000 or greater, requires approval of the Superintendent or designee of the Superintendent in advance of execution and the Board shall be notified no later than 60 days after such approval.
 - G. MPS Contract Compliance Services must be informed of all change orders to determine whether the change affects the HUB, COIN, and Student Engagement requirements.
10. **Violations of Policy.** Any contract executed by an individual lacking the express delegated authority to bind the Milwaukee Board of School Directors is null and void and shall not bind MPS. Any MPS employee who purchases or causes to be purchased goods or services outside the provisions of this policy and its implementing regulations may be deemed personally liable for the cost thereof and may be subject to appropriate disciplinary action up to and including termination.
 11. **Criminal Background Checks:** A criminal information background check is required for all persons providing services that: (1) provide services in MPS facility(ies) on a regular and ongoing basis or more than 5 hours per week; and (2) come into contact with or have access to MPS students with or without the presence of an MPS teacher or MPS supervisor.
 12. **School Food Procurement.** The Administration prefers minimally processed, locally grown and produced foods in their school food procurements. This preference is for minimally processed, locally grown and produced foods to improve the health, well-being and education of school children under the School Food Nutrition program. No portion of this preference shall conflict with state or federal bidding requirements.
 13. **Emergency Purchases.** Emergency purchases of supplies or contracted services may be made when the executive officers or their designee determines that an emergency exists that threatens the health, welfare or safety of students, staff members, the District or the public, including change orders over \$50,000. Such emergency procurements shall be made with as much competition as is practicable under the circumstances. Emergency purchases shall be defined as purchases that are necessary to respond to emergency situations that threaten life, health, safety or the continuation of work. Lack of proper planning to expend funds or purchase necessary materials in a timely manner shall not constitute an emergency. The Board Clerk shall receive notification of the emergency and associated purchases in a timely manner. At the next regular meeting of the Milwaukee Board of School Directors following an emergency purchase, the Board shall receive a written report of all emergency procurements including the basis for the emergency, the selection process for the provider, the name of the provider, the amount and type of the contract or purchase, and a listing of the goods or services procured under the contract or purchase.
 14. **Contract Compliance Services.** All procurements must fully comply with Administrative Policies 3.10 (Historically Underutilized Business Program) and 3.13 (Communities in Need Initiative) which ensure competitive price quotations and participation by certified Historically Underutilized Businesses, COIN-certified individuals, and MPS students.
 15. **Ethics in Procurement.** MPS Staff. Purchasing will conduct itself ethically and fairly, without bias or prejudice in all relations with suppliers. No officer, employee or agent of MPS who exercises any functions

or responsibilities in connection with the review, approval or administration of this contract shall have any personal or financial interest, direct or indirect, in any contract. Officers, employees or agents of MPS are expressly forbidden to accept gifts, gratuities or favors that might improperly influence MPS' relationships with suppliers or create the perception of any impropriety or undue influence in the award of any contracts. Existing Administrative Policy 6.04, pertaining to acceptance of gratuities and gifts, remain in effect and are not abrogated by this code.

Vendors. From the time a bid or RFP is issued until a final award is made, vendors or their lobbyists are not permitted to have any communications with any District employees, officials, or members of the Board of School Directors regarding any bid or RFP other than through the designated contact person identified in the bid or RFP, or through testimony at public hearings. Vendors are expressly prohibited from offering gratuities of any kind to officers, employees or agents of MPS, including meals, gifts and trips. Vendor incentives should be expressed in terms of quality, service, and price in their quotations. Violation of these conditions will constitute immediate disqualification from contract award.

16. **Direct Pays.**

The District is establishing a "No PO (purchase order) No Pay" policy. The final phase-in of this policy will be completed by July 1, 2014, with the framework and phases outlined and published throughout the District at the discretion of the Chief Financial Officer (CFO).

Initial exceptions to the "No PO No Pay" policy shall be as follows:

- A. Purchases under \$500 (i.e. purchases that could be made with petty cash) that could not be purchased under an existing blanket contract and which purchase was made with previous written approval by the principal or department head;
- B. Any payments required to be made by law;
- C. Required regulatory payments to other government entities for taxes, open enrollment and pension;
- D. Payments made for employee benefits such as medical health, dental and prescription drugs and other employee payroll activity such as unions dues, garnishments, annuity contributions, etc.;
- E. Honorariums, memberships, conference registration fees and accompanying travel and lodging, tuition payments, District pass-throughs, postage, newspaper notices, student field trips and activities; and
- F. Purchases or payments as otherwise authorized in writing by the Chief Financial Officer. Any such exceptions shall be reported to the Board on a quarterly basis.

17. **Wage Requirements.**

- A. **Livable Wage.** The District shall ensure that all contractors, vendors and consultants shall at a minimum be paid an amount equal to the hourly wage rate set forth in the City of Milwaukee Livable Wage Policy or as amended. The District shall further ensure that such requirement is binding on any contractor, vendor on consultant doing business with MPS.

18. **Apparel From Responsible Manufacturer.**

- A. **Purpose**
The Milwaukee Board of School Directors wishes to purchase items of apparel from

responsible manufacturers. Toward that end, the following definitions will apply to this section.

B. Definitions

- 1) "Apparel" means all items of clothing and cloth produced by weaving, knitting, and felting, and shall include uniforms, coveralls, footwear, linens, and entrance mats.
- 2) "Manufacture" means to process, fabricate, assemble, treat, or package.
- 3) "Non-poverty wage" means the following for:
 - a. Domestic manufacturers. A base hourly wage adjusted annually to the amount required to produce, for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services' most recent poverty guideline for a family of three plus an additional twenty percent of the wage level paid either as hourly wages or health benefits.
 - b. Outside the United States. A nationwide wage and benefit level which is comparable to the non-poverty wage for domestic manufacturers as defined in sub. 1 after being adjusted to reflect the country's level of economic development by using a factor such as the relative national standard of living index in order to raise a family of three out of poverty. In addition, workers shall not be subject to disciplinary wage deductions.
- 4) "Responsible manufacturer" means an entity engaged in manufacturing that can demonstrate all of the following:
 - a. compliance with all applicable local and international labor laws and workplace regulations regarding wages and benefits and workplace health and safety, as well as with the fundamental conventions of the international labor organization, including those regarding forced and child labor and freedom of association;
 - b. payment to its employees of non-poverty wages as defined in subparagraph 18 B 3)a for domestic manufacturers and subparagraph 18 B 3)b for manufacturers located outside the United States;
 - c. termination of its employees only with just cause; and
 - d. establishment of a mechanism for the resolution of workplace disputes.

C. Requirements

- 1) Application
 - a. All MPS contracts involving the purchase of items of apparel totaling \$5,000 or more shall be awarded by the MPS Purchasing Division.
 - b. All MPS contracts involving the purchase of items of apparel totaling \$5,000 or more shall be awarded to the lowest responsible contractor.
- 2) Affidavits
 - a. No contract for the purchase of items of apparel totaling \$5,000 or more shall be awarded unless the lowest responsible contractor first submits to the MPS Procurement Manager a signed affidavit which includes the following information for the specified time period of the contract:
 - i) the names and addresses of the companies and facilities in which the items of apparel have been or will be manufactured;
 - ii) the names and addresses of all owners of the facilities in which the items of apparel have been or will be manufactured;
 - iii) the base hourly wage and percentage of wage level paid as health benefits for persons working at the facilities in which the items of apparel have been or will be manufactured; and
 - iv) a statement by the contractor that the facilities identified pursuant to this paragraph are operated by a responsible manufacturer as defined in sub. 18

B 4).

- b. Contractor shall procure and submit affidavits from all subcontractors employed by the contractor during the period of the contract.
- c. In the event that information provided by the contractor or subcontractor pursuant to this paragraph changes during the period of the contract, the contractor shall submit to the MPS Procurement Manager affidavits relating to the updated information.
- d. The MPS Procurement Manager shall maintain and make available for public inspection any affidavit submitted pursuant to this paragraph.

D. Contract Bid Specifications

The MPS Procurement Division shall add a digest of the provisions of this section to all bid specifications involving apparel purchases.

E. Specification for Apparel Contracts

No contract for the purchase of items of apparel covered under this section shall be entered into unless the contract contains a stipulation stating that the contractor agrees to provide only items of apparel manufactured by responsible manufacturers, and the contractor agrees to include an equivalent stipulation in all subcontracts.

F. Monitoring and Enforcement

1) Responsibility

The MPS Procurement Division shall review the affidavits submitted by apparel contractors, receive and investigate complaints relating to compliance with this section, and impose appropriate sanctions upon any contractor who provides false information or fails to comply with the provisions of this section.

2) Notice

The MPS Procurement Division shall, in a timely manner, provide on its website a notice and related documentation regarding the following:

- a. the issuance of invitations to bid and the awarding of contracts relating to items of apparel covered by this section; and
- b. the receipt of affidavits submitted pursuant to sub. 18 C 2).

3) Sanctions

Any contractor or subcontractor engaged in an MPS apparel contract found by the Procurement Manager to have submitted false, misleading, or fraudulent information, or to have otherwise failed to comply with the provisions of this section, may be subject to any of the following sanctions:

- a. withholding of payments;
- b. termination, suspension, or cancellation of the contract in whole or in part;
- c. after a due-process hearing, denial of the right to bid on future MPS contracts by the contractor, subcontractor, partner, agent, or by any corporation of which contractor is a member, for a period of one year after the first violation is found, and for a period of 3 years after a second violation is found.

G. Waiver

The requirements of this section may be waived in writing by the MPS Procurement Manager if any of the following are true:

- a. all bidders to a contract are deemed ineligible under this section;
- b. the contract is necessary in order to respond to an emergency which endangers the public health and safety, and no contractor who complies with the requirements of this section is immediately capable of responding to the emergency.

H. Appeals

An apparel contractor who objects to any decision or action by the Procurement

Manager relative to specifications and recommendations for purchasing items of apparel, may appeal the decision to the Committee on Accountability, Finance, and Personnel of the Milwaukee Board of School Directors.

19. **Appeals.** All appeals from Administrative recommendations to the Board must be made to the individual(s) and in the manner set forth in the administrative procedure within 5 calendar days of the publication of the recommendation to the District's website. No appeals will be considered after such time.
20. **Sales Calls and Demonstrations.** To ensure the effective and efficient administration of its procurement practices and to ensure that staff is focused on student achievement, the Milwaukee Board of School Directors seeks to do business only with responsible vendors. Toward this end, vendors shall not be permitted in schools or other departments for the purpose of making sales unless authorized to do so by the Director of Procurement or his/her designee. Further, all vendors, including those awarded blanket agreements or designated as District approved vendors, shall be prohibited from engaging in aggressive solicitations, repetitive solicitations despite refusals. If special or technical details concerning goods or services to be purchased are required, the involvement of vendors shall be coordinated through the Purchasing Department. Vendors who violate this policy may be subject to debarment for a period of up to one year.
21. **Licensing of MPS and School Names.** Any and all requests for licensing or endorsements of the Milwaukee Public Schools' name or any school's name must be approved by the Board.
22. **Documentation.** All related Procurement documents will be maintained according to the approved MPS records retention schedule.
23. **Effective Date.** The effective date of this policy shall be January 1, 2013.