

**AASB POLICY REFERENCE MANUAL UPDATE SERVICE
2016-2017 UPDATE INSTRUCTION SHEET**

NOTE: This packet includes only those policy manual pages that have been revised, deleted or newly established. Full text pages are included and are to be substituted as indicated below.

For ease of School Boards, AASB has identified those portions of the Update that require formal Board action in order to implement the policy changes. This is indicated by a “Yes” or “No.” A “No” is used if changes have been made only to an AR or an Exhibit, or if policy changes are limited to explanatory notes, legal reference or cross-reference updates, or minor grammatical or stylistic changes that have not changed the policy meaning.

ARTICLE 3, Series 3000 – Business and Noninstructional Operations

REPLACE/ADD	FORMAL ADOPTION REQUIRED	DESCRIPTION
BP 3310	Yes	<p>PURCHASING PROCEDURES</p> <p>The introductory note was modified to reflect new procurement procedures filed by the Office of Management and Budget. The District must adopt a procurement policy that meets the standards established by the OMB for all contracts under a Federal award. The note also includes a reference to the newly adopted E 3310, a model procurement policy that may be adopted by a District in whole or in part. A conflict of interest section was added to the body of the policy. The reference section was amended to include a reference to the new OMB procurement standards.</p>
E 3310	No	<p>PROCUREMENT **NEW POLICY**</p> <p>This new exhibit is a model procurement policy a District may adopt to align with the new procurement standards promulgated by the OMB in 2 CFR 200.317-326. Each District must adopt its own standards for procurement, and Alaska law empowers regional school boards broad latitude to establish their own fiscal procedures. However, all contracts under Federal awards must adhere to the requirements of 2 CFR 200.317-326. This exhibit provides a model procurement policy a District can adopt to align with the Federal standards. It may be revised to reflect individual district practice and needs.</p>

PURCHASING PROCEDURES

BP 3310

Note: Pursuant to A.S. 14.14.060 and 14.14.065, city and borough school districts may establish their own procedures for purchase of supplies and equipment. A.S. 14.08.101 empowers regional school boards to establish their own fiscal procedures, including the purchase of supplies and equipment. All contracts made under Federal awards must comply with the Office of Management and Budget's procurement procedures found in 2 CFR 200.317-326. A model internal procurement procedure reflecting the federal procedures can be found in E 3310. This model procedure may be modified and incorporated into existing policy as desired. The following sample policy may be revised to reflect district practice and needs.

The School Board desires to ensure that maximum value is received for money spent by the district and that records are kept in accordance with law. The Superintendent or designee may issue and sign purchase orders and shall submit them for School Board approval or ratification.

No employee, officer, or agent of the District may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-substantial gifts of nominal value may be accepted if the item is non-solicited.

(cf. 3300 - Expenditures/Expending Authority)
(cf. 3400 - Management of District Assets)
(cf. 3460 - Financial Reports and Accountability)
(cf. 9270 - Conflict of Interest)

Note: A.S. 36.15.050 establishes a preference for purchasing Alaskan agricultural and fisheries products. A.S. 14.03.085 makes school districts, except REAA's, subject to A.S. 29.71.050, which establishes a preference for purchasing recycled Alaska products.

The School Board encourages the selection of Alaskan products when such products meet the needs of the district and shall adhere to state law regarding purchasing preferences for Alaskan products.

(cf. 3311 - Bids)
(cf. 3312 - Contracts)

Note: A U.S. Supreme Court decision (City of Richmond v. J. A. Croson Co.) indicates that before enacting an affirmative action purchasing program, the district would have to have strong evidence of past district discrimination against minority contractors and the district's program would have to be narrowly tailored to accomplish its remedial purpose.

Legal Reference:

ALASKA STATUTES

- 14.08.101 Powers (Regional school boards)*
- 14.14.060 Relationship between borough school district and borough*
- 14.14.065 Relationship between city school district and city*
- 29.71.050 Procurement preferences for recycled Alaska products*
- 36.30. State Procurement Code*
- 37.05 Fiscal Procedures Act*

CODE OF FEDERAL REGULATIONS

2 C.F.R. 200.317-326, Procurement Standards

City of Richmond v. J.A. Croson Co., 488 U.S. 469 (1989)

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PURCHASING PROCEDURES

AP 3310

Purchasing Requisitions/Purchase Orders

1. Insofar as possible, goods and services purchased will meet the needs of the person or department ordering them at the lowest price consistent with standard purchasing practice. Maintenance costs, replacement costs, and trade-in values shall be considered when determining the most economical purchase price.
2. Requisitions for budgeted items shall originate from personnel directly responsible for their use. All requisitions shall be given proper review for approval or disapproval by the appropriate administrative personnel.
3. Every transaction between a buyer and seller involving the transfer of property, equipment or supplies shall be made by purchase orders, formal contract or receipt.
4. Purchase orders and other purchase obligations shall be signed by the Superintendent or designee.
5. The business office or other appropriate administrative entity shall verify the availability of funds and prepare purchase order to commit the expenditures.

Quantity Purchasing

Quantity buying shall be effected whenever practicable and feasible in order to achieve an economy of scale in accordance with the total needs of the school district.

Business and Noninstructional Operations

E 3310 (a)

PROCUREMENT

Note: This exhibit is a model procurement procedure that may be adopted by the District business office. It includes procurement procedures required by the Office of Management and Budget for contracts made under Federal awards, found in 2 CFR 200.317-326. **Contracts made under Federal awards must contain procedures comparable to those described in this Exhibit**, as well the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards. A copy of this appendix is found at the end of this Exhibit. The procedures in this Exhibit may be modified so long as the District adopts procedures that meet the requirements of 2 CFR 200.317-326. **The procedures in this Exhibit are not mandatory for contracts not made under Federal awards.** These procedures may be modified as necessary to address District needs.

Competition

All procurement transactions under Federal awards must be conducted in a manner providing full and open competition. 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:

- (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) Organizational 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; and
- (7) Any arbitrary action in the procurement process.

The District must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. However, detailed product specifications should be avoided if at all possible. 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.

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.

Minority Bidding

When procuring contracts under Federal awards, the District must take affirmative steps to utilize minority businesses, women’s business enterprises, and labor surplus area firms when possible. Affirmative steps must include:

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E 3310 (b)

PROCUREMENT (continued)

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total 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, which 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; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Contract Cost

The District must perform a cost or price analysis in connection with every procurement action under Federal awards in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the District must make independent estimates before receiving bids or proposals.

The District must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under Federal law. The District may reference its own cost principles that comply with the Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Methods of Procurement

The District must use one of the following methods for procurement under Federal awards:

- (a) Procurement by micro-purchases: Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold in 2 CFR §200.67. To the extent practicable, the District must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the District considers the price to be reasonable.
- (b) Procurement by small purchase procedures: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

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E 3310 (c)

PROCUREMENT (continued)

- (c) Procurement by sealed bids (formal advertising): Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 - a. In order for sealed bidding to be feasible, the following conditions should be present:
 - i. A complete, adequate, and realistic specification or purchase description is available;
 - ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
 - iii. 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.
 - b. If sealed bids are used, the following requirements apply:
 - i. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
 - ii. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - iii. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

- (d) Procurement by competitive proposals: 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:
 - a. 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;
 - b. Proposals must be solicited from an adequate number of qualified sources;
 - c. The District must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - d. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

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E 3310 (d)

PROCUREMENT (continued)

- e. The District may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- (e) Procurement by noncompetitive proposals: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - a. The item is available only from a single source;
 - b. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or
 - d. After solicitation of a number of sources, competition is determined inadequate.

Procurement of Recovered Materials

The District must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Legal Reference:

CODE OF FEDERAL REGULATIONS
2 C.F.R. 200.317-326, Procurement Standards

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PROCUREMENT (continued)

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**Business and Noninstructional Operations
PROCUREMENT (continued)**

E 3310 (f)

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.