

This policy is amended to reflect recent legislative changes to Idaho Code §67-2803, to clarify the effect of a vendor's failure to object to an award, and to reference that when federal funds are used to purchase services, the district will follow the requirements set forth in EDGAR.

The board may enter into service contracts with independent contractors as necessary for the operation of the district. The board will comply with the requirements of Idaho Code §§67-2800, *et seq.*, relative to competitive bidding for service contracts, this district's Policy 850 (Purchasing), and this district's Policy 851, entitled "Supplemental Bidding Procedures." Where the purchase of services is made with federal funds, the district will also follow the guidelines set forth in the District's Policies and Procedures Manual for the Administration of Federal Education Programs ("Federal Programs Manual").

Before entering into a contract for the expenditure of twenty-five thousand dollars (\$25,000) or more, the board or its designee will have the contract reviewed by legal counsel to ensure that the school district's interests are adequately protected.

SERVICE CONTRACTS EXCLUDED FROM COMPETITIVE BIDDING UNDER IDAHO CODE §67-2803

When purchasing services, the board of trustees will comply with all statutory bid requirements unless the expenditure is specifically exempt pursuant to Idaho Code §67-2803, as follows:

1. Contracts for services, regardless of their nature, valued at less than twenty-five thousand dollars (\$25,000), provided that such contracts or purchases shall be guided by the best interests of the district, as determined by the board; and
2. Contracts for personal or professional services to be performed by an independent contractor. Contracts with certain public works construction professionals must comply with requirements as set forth in "Contracts with Certain Public Works Construction Professionals" section of this Policy.
3. The acquisition of services through contracts entered into by the division of purchasing of the department of administration of the state of Idaho.

BUS TRANSPORTATION SERVICES

In the event the district anticipates expending over twenty-five thousand dollars (\$25,000) through a contract for bus transportation services, Idaho Code §33-1510 will be followed.

SERVICE CONTRACTS VALUED BETWEEN \$25,000 AND \$50,000

When the board contemplates entering into a service contract for other than professional or personal services, valued in excess of twenty-five thousand dollars (\$25,000) but not to exceed fifty thousand dollars (\$50,000), it will solicit competitive bids as provided in this section.

Bid Solicitation

The written solicitation for bids will be sent to no fewer than three (3) vendors by electronic or physical delivery. The solicitation will describe the services to be provided in sufficient detail to allow a vendor of such services to understand what the board seeks to procure, the electronic or physical delivery method(s) authorized to submit a bid, and the date and time by which the board clerk must receive a bid proposal. The time to respond to the solicitation must be reasonable; such time will not be less than three (3) business days, except in the event of an emergency.

Objections

The board clerk must receive any written objections to specifications or bid procedures at least one (1) business day before the date and time the bids are due to be received. *The board or designee will respond to any such objection in writing and communicate such response to all prospective bidders, adjusting bidding timeframes if necessary.* Any objection not submitted within the time provided in this section will be deemed a waiver of any rights to raise such objection thereafter.

Contract Award

Upon receipt of the written bids, the clerk will compile and submit the written bids to the board or designee, which will approve the responsive bid proposing the lowest price or reject all bids and publish notice for bids, as before.

If the board finds that it is impractical or impossible to obtain three (3) bids for the proposed services, the board may acquire such services in any manner the board deems best from a qualified vendor quoting the lowest price. When fewer than three (3) bids are considered, the board will document the efforts undertaken to obtain at least three (3) bids. Such documentation will be maintained for at least six (6) months after any such procurement is made. If two (2) or more price quotations are the same and both constitute the lowest responsive bids, the board has discretion to accept the bid it chooses.

SERVICE CONTRACTS VALUED IN EXCESS OF \$50,000

When the board contemplates entering into a service contract for other than professional or personal services, valued in excess of fifty thousand dollars (\$50,000), an open competitive sealed bid process will be utilized as set forth in this section. The procurement will be made from the qualified bidder submitting the lowest bid price complying with bidding procedures and meeting the specifications for the services sought to be procured.

Bid Solicitation

The written request for bids, and notices thereof, will succinctly describe the services to be provided and set a date, time, and place for the opening of bids. Two (2) notices soliciting bids must be published in the official newspaper of the district.* The first notice must be published at least two (2) weeks before the date for opening bids, with the second notice to be published in the succeeding week at least seven (7) days before the date that bids are scheduled to be opened. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions will be made available upon request by any interested bidder. Bids that do not substantially comply with the bid forms will not be considered.

Objections

The board clerk must receive any written objections to specifications or bid procedures at least three (3) business days before the date and time the bids are scheduled to be opened. *The board or designee will respond to any such objection in writing and communicate such response to all prospective bidders, adjusting bidding timeframes if necessary.* Any objection not submitted within the time provided in this section will be deemed a waiver of any rights to raise such objection thereafter.

Bid Security

If the board deems it is in the district's best interest, it may require bidders to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid will not be considered unless one (1) of the forms of bidder's security is enclosed with it. The board may require that the bid security be in one of the following forms:

1. Cash;
2. A cashier's check payable to the district;
3. A certified check payable to the district; or
4. A bidder's bond executed by a qualified surety company, payable to the district.

Contract Award

Sealed bids will be opened in public at the date, time, and place specified in the notice, thereafter to be compiled and submitted to the board. Any bid received by the board may not be withdrawn after the time set in the notice for opening of bids.

In its discretion, the board may reject all bids and re-bid, or may, after finding it to be a fact, pass a resolution declaring that the subject goods can be procured more economically on the open market. If two or more bids are the same and both constitute the lowest responsive bids, the board may accept the one it chooses.

If the board chooses to award the contract to a bidder other than the apparent low bidder, the board will declare its reason(s) on the record and communicate such reason(s) in writing to all who have submitted a competing bid.

Failure to Execute Contract

If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the district at the sole discretion of the board and, thereafter, the proceeds may be deposited in a designated fund out of which the reasonable expenses for procuring substitute performance are paid.

The board may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the next lowest qualified bidder. If the board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified bidder's security may be applied by the board to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security.

Objection to Contract Award

If any participating bidder objects to the award of a contract, such bidder must submit a written response to the board's notice within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason(s) that the award decision of the board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, the board will review its decision and determine whether to affirm or modify the award, or re-bid the contract, setting forth its reason(s) therefor. After completion of the review process, the board may proceed as it deems to be in the public interest. Any objection or appeal not submitted within the time required by this section will be deemed a waiver of any rights to raise such objection or appeal thereafter.

CONTRACTS WITH CERTAIN PUBLIC WORKS CONSTRUCTION PROFESSIONALS

The board may negotiate contracts or agreements for professional engineering, architectural, landscape architectural, construction management, and professional land surveying services on the basis of demonstrated competence and qualifications for the type of services required at fair and reasonable prices, utilizing the following process:

1. The board will follow the statutory guidelines in the securing of all contracts for professional engineering, architectural, landscape architectural, construction management, and land surveying services if it is anticipated that the total professional service fee will exceed twenty-five thousand dollars (\$25,000):
 - a. Publish public notice in the official newspaper of the district, the first of which shall be published at least two (2) weeks before the date for opening bids, and the

- second of which shall be published in the succeeding week at least seven (7) days before the date the bids are scheduled to be opened. The notice shall succinctly describe the services sought. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions shall be made available upon request of any interested bidder;
- b. Encourage persons or firms engaged in the services being solicited to submit statements of qualifications and performance data;
 - c. Establish and make available to the public criteria and procedures used for the selection of qualified persons or firms to perform such services;
 - d. Select the persons or firms whom the board determined to be best qualified to provide the required services, ranked in order of preference, pursuant to the district's established criteria and procedures;
 - e. Negotiate with the highest ranked person or firm for a contract or agreement to perform such services at a price determined by the board to be reasonable and fair to the public after considering the estimated value, scope, complexity, and nature of the services; and
 - f. When unable to negotiate a satisfactory contract or agreement, formally terminate negotiations and undertake negotiations, following the procedure described in subsection d, above, with the next highest ranked person or firm, until a contract or agreement is reached.
2. In fulfilling the selection requirements, the board may limit its selection to a list of three (3) persons or firms selected and preapproved for consideration by the board. This preapproved list shall be established in the same manner as selection of an individual contractor. No further publication is then required.
 3. The board may request information concerning a person's or firm's rates, overhead, and multipliers, if any, but such information shall not be used for the purpose of ranking in order of preference as required in subsections a through f, above.
 4. If the anticipated expenditure for these services is less than twenty-five thousand dollars (\$25,000), the board will use the guidelines above, or establish other guidelines for selection based on demonstrated competence and qualifications to perform the type of services required, followed by negotiation of the fee at a price determined by the district to be fair and reasonable after considering the estimated value, the scope, the complexity, and the nature of the services.
 5. When the board has previously awarded a professional services contract to a person or firm for an associated or phased project, the board may, at its discretion, negotiate an extended or new professional services contract with that person or firm. *Associated or phased projects are planned construction projects comprised of developmental stages that are interrelated but individually functional.*

6. The board will not enter into a contract with any person or firm for construction management services as a construction manager representative or as a construction manager/general contractor if such person or firm is required to be licensed as required by chapter 45, Title 54, Idaho Code, unless:
 - a. Such person holds a valid license or such firm holds a valid certificate issued pursuant to Idaho Code §§54-4501 *et seq.*;
 - b. The selection of the construction manager representative or construction manager/general contractor is made pursuant to Idaho Code §67-2320; and
 - c. All terms of the contract including, but not limited to, terms for management fees, incentive compensation and disposition of any contingency fund, if applicable, are agreed upon in writing.

7. The board may award a contract for construction management services on either a construction manager representative or construction manager/general contractor basis under the following guidelines:
 - a. Construction Manager Representative (CMR). The board may award a contract to a licensed construction manager and the firm of which he is a principal or full-time employee to act only as a representative for the board.
 - i. The CMR must comply with all notice and bidding laws in soliciting bids or awarding contracts for public works construction to be entered into by the board in the same manner as would the board if it were doing the same activities without the assistance of a construction manager.
 - ii. The CMR and the firm of which he is a principal or employee shall not provide construction management services for a construction project on which the CMR or his firm also provides design services or other construction related services, whether as a contractor or subcontractor.
 - iii. The guidelines for CMR services do not preclude licensed architects or registered professional engineers from providing public works construction management services which are normally provided by licensed architects or registered professional engineers for a project on which the person or firm has provided design services. However, such public works construction management services provided by licensed architects or registered professional engineers shall not include the procurement of equipment or construction work required by law to be competitively bid for public works construction.
 - b. Construction Manager/General Contractor (CM/GC). The board may award a contract to a licensed construction manager and the firm of which he is a principal or full-time employee to act as both construction manager and general contractor,

provided the CM/GC has a valid public works contractor license as a general contractor pursuant to Idaho Code §54-1902.

- i. Compensation of a CM/GC shall be determined pursuant to Idaho Code §67-2320.
- ii. At such time as the design of a project or a phase of a project is available, the construction work, materials and equipment for construction of a project may be incorporated into the CM/GC contract based upon bids solicited from licensed public works contractors and from suppliers for all construction work, materials and equipment.
- iii. For each portion of the work, competitive bids shall be solicited from not less than three (3) contractors or suppliers deemed to be qualified by the CM/GC. All bids shall be opened publicly in the presence of a representative of the board and, once opened, bids shall be subject to the Idaho Public Records Act, Idaho Code §§74-101 *et seq.*
- iv. All construction work, materials and equipment shall be awarded to the lowest responsive qualified bidder. For good cause, the public entity may approve the award of bids based upon fewer than three (3) bids.
- v. The CM/GC, or its subsidiaries and affiliated companies, may bid to perform construction work or to supply materials or equipment only if it holds a valid public works construction license, and for which it customarily self-performs or supplies such construction work, materials or equipment; provided, the board may limit the amount of work the CM/GC, including its subsidiaries and affiliated companies, may perform under the contract. Bids from the CM/GC and its subsidiaries or affiliated companies must be opened at the opening of any other bids.
- vi. When bidding for all phases of the project has been completed, a guaranteed maximum price for the entire project may be negotiated by the board.

AGREEMENT FOR JOINT EXERCISE OF PURCHASING POWERS

If determined appropriate, the board may make purchases of services via contracts held by the State of Idaho or any subdivision thereof, or any agency of the federal government, by entering into a cooperative Agreement for the Joint Exercise of Purchasing Powers with that entity, pursuant to Idaho Code §§67-2326 through 67-2333, 33-315 through 33-318, and 33-601. The vote on the decision to enter into a cooperative Agreement for the Joint Exercise of Purchasing Powers will be by resolution of the board and the minutes will reflect the board's reason(s) for doing so. Upon entering into such an Agreement, the board will forego the bidding process.

JOINT PURCHASING AGREEMENTS - NOT-FOR-PROFIT ASSOCIATIONS

The board may enter into joint purchasing agreements with the State of Idaho or other political subdivisions and may participate in joint purchasing agreements through a joint purchase program established by any not-for-profit association of political subdivisions. Services purchased pursuant to such joint purchase agreements will be acquired in accordance with the provisions of this Policy, provided such authority does not preclude or limit the board from entering into purchase agreements as otherwise provided by statute.

EMERGENCY EXPENDITURES

If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or if it is necessary to do emergency work to prepare for national or local defense, or it is necessary to do emergency work to safeguard life, health, or property, the board may pass a resolution declaring that an emergency exists and the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. Upon adoption of the resolution, the board may expend any sum required in the emergency without compliance with the bidding requirements pursuant to Idaho Code §§33-601(9) and 67-2808(1).

**LEGAL REFERENCE:**

Idaho Code Sections

33-315 – 33-318

33-601

67-232067-2326 through 67-2333

67-2800 *et seq.*

54-1901 *et seq.*

54-4511

74-101 *et seq.*

Federal Regulations

2 CFR Part 200 (EDGAR)

ADOPTED: September 6, 2006

AMENDED: March 22, 2017