

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 school district property, the district will follow the requirements set forth in EDGAR.

The board may purchase personal property 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 personal property, this district's Policy 850 (*Purchasing*), and this district's Policy 851, entitled "*Supplemental Bidding Procedures*." Where the purchase of personal property 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 that entails 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 district's interests are adequately protected.*

#### **PURCHASES AND LEASES EXCLUDED FROM COMPETITIVE BIDDING PROCESSES UNDER IDAHO CODE SECTION 67-2803**

When purchasing or leasing personal property, the board of trustees will comply with all statutory bid requirements set forth in Idaho Code §§67-2800, *et seq.*, unless the expenditure is specifically exempted as follows:

1. Contracts or purchases for personal property of less than twenty-five thousand dollars (\$25,000), provided such contracts and purchases shall be guided by the best interests of the district, as determined by the board. The board may, when practical, call for competitive price quotations for such purchases.
2. The purchase of curricular materials, regardless of the purchase price. "Curricular materials" is defined as textbook and instructional media, including software, audio/visual media, and Internet resources.
3. The purchase or lease duplicates the price and substance of a contract for like goods or services that has been competitively bid by the State of Idaho, one of its political subdivisions, or an agency of the federal government.
4. Purchase of insurance.
5. Costs of participation in a joint powers agreement with other units of government.

6. Federal government general services administration (GSA) schedules or federal multiple award schedules (MAS).
7. The acquisition of personal property through contracts entered into by the division of purchasing of the department of administration of the state of Idaho.

**PERSONAL PROPERTY VALUED BETWEEN \$25,000 AND \$50,000**

When the board contemplates purchasing or leasing personal property, 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 personal property to be purchased or leased in sufficient detail to allow a vendor dealing in such goods 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; except in the event of an emergency, such time will not be less than three (3) business days.

**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 required by 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 procurement 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 procurement, the board may acquire the property 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 procure at least three (3) bids and 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 either bid.

**PERSONAL PROPERTY VALUED IN EXCESS OF \$50,000**

When the board contemplates an expenditure to purchase or lease personal property 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 goods sought to be procured.

**Bid Solicitation**

The written request for bids, and notices thereof, will succinctly describe the personal property to be procured 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 required by 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.

In its discretion, the board may preauthorize the purchase of equipment at a public auction.

**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 school 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) therefore. 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.

**AGREEMENT FOR JOINT EXERCISE OF PURCHASING POWERS**

If determined appropriate, the board may make purchases of personal property 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. Personal property 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.

The board may participate in a program established by any not-for-profit association of which they become a member to assist such school districts in bidding and negotiating joint purchase contracts and discount purchase agreements. Participation in any such program does not obligate the board to purchase goods or services through the program. Any not-for-profit association operating such program will cause an independent, certified audit of the program to be performed annually. The audit will be made available to the Legislature upon request and a copy shall be made available for public inspection.

**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 if 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).

**SOLE SOURCE EXPENDITURES**

The board may declare that there is only one (1) vendor if there is only one (1) vendor for the personal property to be acquired. For purposes of this policy, "only one (1) vendor" refers to situations where there is only one (1) source reasonably available and includes, but is not limited to, the following situations:

1. Where property is required to respond to a life-threatening situation or a situation which is immediately detrimental to the public welfare or property;
2. Where the compatibility of equipment, components, accessories, computer software, replacement parts, or service is the paramount consideration;
3. Where a sole supplier's item is needed for trial use or testing;
4. The purchase of mass-produced movies, videos, books or other copyrighted materials;
5. The purchase of property for which it is determined there is no functional equivalent;
6. The purchase of public utility services;
7. The purchase of products, merchandise, or trademarked goods for resale at a school; or
8. Where competitive solicitation is impractical, disadvantageous, or unreasonable under the circumstances.

Upon declaring that there is only one (1) vendor for personal property, unless the property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property, the board will publish notice of a sole source procurement in a newspaper of general circulation in the district at least fourteen (14) calendar days prior to the award of the contract. *If a potential vendor objects in writing within seven (7) calendar days and sets forth reasons therefor, the board may reconsider whether the personal property was properly declared as a sole source procurement. If, upon reconsideration, the board determines that there is more than one (1) vendor, it will follow any required bidding process.*

**LEGAL REFERENCE:**

Idaho Code Sections

33-315 – 33-318

33-402

33-601

67-2326 through 67-2333

67-2800 *et seq.*

Federal Regulations

2 CFR Part 200 (EDGAR)

**ADOPTED: September 6, 2006**

**AMENDED: March 22, 2017**