

***850 — Purchasing. The legislature amended the local government purchasing statute (Idaho Code "67-2801 et seq.) by adding several new exemptions to the purchasing laws, increasing the thresholds for the various types of public purchasing, and adding an RFP procedure for purchases of goods and services. For example, contracts or purchases of less than \$50,000 are now exempt from the competitive bidding requirements. The updates to this policy, and policies 850.30, 850.60, 850.90 and 851, reflect the 2017 legislative changes. All of the purchasing policies should be updated as soon as possible to ensure continued compliance with federal purchasing regulations.

Where federal funds are used for purchases of goods, services or public works construction, the district will also follow procurement requirements set forth in 2 CFR Part 200.

PURCHASES EXCLUDED FROM THE STATUTORY PROCUREMENT PROCESSES UNDER IDAHO CODE SECTION 67-2803

The board will comply with all statutory procurement (bid) requirements unless the expenditure is exempted as provided by law. The following are exempted from the bidding requirements pursuant to Idaho Code §67-2803:

1. The acquisition of personal property when the procurement 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.
2. Contracts or purchases of less than fifty thousand dollars (\$50,000), 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.
3. Disbursement of wages or compensation to any employee, official, or agent of the district for performance of personal services.
4. Procurement of personal or professional services to be performed by an independent contractor.
5. Procurement of an interest in real property.
6. Procurement of insurance.
7. Costs of participation in a joint powers agreement with other units of government.
8. Procurement of used personal property.

9. Procurement from federal government general services administration (GSA) schedules or federal multiple award schedules (MAS).
10. Procurement of personal property or services through contracts entered into by the division of purchasing of the department of administration of the state of Idaho.
11. Procurement of goods for direct resale.
12. Procurement of travel and training.
13. Procurement of goods and services from Idaho correctional industries.
14. Procurement of repair for heavy equipment.
15. Procurement of software maintenance, support and licenses of an existing system or platform that was bid in compliance with state law.
16. Procurement of public utilities.
17. Procurement of used equipment at an auction if authorized by the Board of Trustees.
18. 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.

LEGAL REVIEW OF CONTRACTS

Before entering into a contract that entails the expenditure of ~~fiftytwenty-five~~ thousand dollars (\$~~5025~~,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.

BUS TRANSPORTATION SERVICES

In the event the district anticipates expending over ~~fiftytwenty-five~~ thousand dollars (\$~~5025~~,000) through a contract for bus transportation services, Idaho Code §33-1510 will be followed.

EMERGENCY EXPENDITURES

If there is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster, or 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 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).

COMPLIANCE WITH FEDERAL PURCHASING GUIDELINES

Where the district seeks to purchase goods, services or public works construction using federal funds, the district will use the following guidelines:

1. District purchases will conform to applicable federal law (provided, however, that where state purchasing procedures are more restrictive, the District will follow state law requirements).
2. The board or its designee will maintain oversight of contracts to ensure performance in accordance with the terms, conditions and specifications of their contracts or purchase orders.
3. The district will maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts as more fully set forth in *Policy 228 (Board Member Conflict of Interest)* and *Policy 418 (Employee Conflict of Interest)*, and in the District's Policies and Procedures Manual for the Administration of Federal Education Programs ("Federal Programs Manual").
4. The district will avoid acquisition of unnecessary or duplicative items by giving consideration to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, the board or its designee will analyze lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach to purchases.
5. Where practical or appropriate, the district will enter into state and local inter-governmental agreements or inter-entity agreements for procurement or use of common or shared goods and services.
6. Where feasible or appropriate to reduce project costs, the district will use federal excess and surplus property in lieu of purchasing new equipment and property.
7. Where practical or appropriate, the district will use value engineering clauses in contracts for public works construction of sufficient size to offer reasonable opportunities for cost reductions. "Value engineering" is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
8. The district will only award contracts to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
9. The district will maintain records sufficient to detail the history of each procurement. These records will include, but are not limited to: rationale for the method of

- procurement; selection of contract type; contractor selection or rejection; and the basis for the contract price.
10. The district will use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.
 - a. “Time and material type contract” means a contract whose cost to the district is the sum of:
 - i. The actual cost of materials; and
 - ii. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
 - b. If the board selects a time and materials type contract, the board or its designee will ensure a high degree of oversight of the contract to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
 11. The district will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of its procurements. These include, but are not limited to: source evaluation; protests; disputes; and claims.
 12. All procurement transactions will be conducted in a manner providing full and open competition consistent with state law and the standards set forth in *this Policy 850, Policy 850.30 (Purchasing or Leasing Personal Property), Policy 850.60 (Service Contracts) and Policy 850.90 (Public Works Construction)*.
 13. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals will be excluded from competing for such procurements.
 14. Some of the situations considered to be restrictive of competition include but are not limited to:
 - a. Placing unreasonable requirements on firms in order for them to qualify to do business;
 - b. Requiring unnecessary experienced and excessive bonding;
 - c. Non-competitive pricing practices between firms or between affiliated companies;
 - d. Organizational conflicts of interest;

- e. 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
 - f. Any arbitrary action in the procurement process.
15. The district will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in cases where applicable federal statutes expressly mandate or encourage geographic preference. This requirement does not preempt any applicable state licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
16. In its procurements, the district will incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured using the following guidelines:
- a. In competitive procurements, such descriptions will not contain features which unduly restrict competition.
 - b. 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.
 - c. Detailed product specifications will be avoided if at all possible.
 - d. 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 offerors will be clearly stated.
 - e. The district will identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
17. The district will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open competition. In addition, the district will not preclude potential bidders from qualifying during the solicitation period.

18. The district will take all affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. For purposes of this policy, affirmative steps include:
 - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises, are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority and women's businesses;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small, minority and women's businesses;
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and
 - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs a – e of this section.
19. The district will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold as defined in 2 CFR §200.88 (currently \$150,000). The method and degree of analysis will be dependent on the facts surrounding the particular procurement situation, but as a starting point the district will make independent estimates before receiving bids or proposals.
20. The district will 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 will 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.
21. The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.
22. For public works construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold as defined in 2 CFR §200.88 (currently \$150,000), the district will adhere to state bonding requirements (set forth in Idaho Code §54-1926) provided a determination has been made by a federal awarding agency or pass

through entity that the federal interest is adequately protected. Where such a determination has not been made, the minimum bonding requirements will be as follows:

- a. A bid guarantee from each bidder equal to five percent (5%) of the bid price, which must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - b. A performance bond on the part of the contractor for 100 percent of the contract price. The performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.
 - c. A payment bond on the part of the contractor for 100 percent of the contract price. The payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.
23. In addition to other provisions required by the district or state law, all contracts made by the district under a federal award must contain provisions covering the requirements set forth in Appendix II to 2 CFR Part 200, a copy of which is attached to this policy.

METHODS OF PROCUREMENT TO BE FOLLOWED FOR PURCHASES USING FEDERAL FUNDS

Where the district seeks to purchase goods, services or public works construction using federal funds, the district will use one of the following methods of procurement (see also the District's Federal Programs Manual):

1. **Micro-Purchases.** Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the district will 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.
2. **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 as defined by 2 CFR §200.88 (currently \$150,000). If these procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
3. **Sealed Bid/Formal Advertising.** Under this method of procurement, bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the

responsible bidder whose bid conforms with all the material terms and conditions of the invitation for bids and is the lowest in price.

- a. This method of procurement is preferred if the following conditions exist:
 - i. A complete, adequate, and realistic specification or purchase description is available;
 - ii. Two (2) 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 a successful bidder can be made principally on the basis of price.
 - b. If sealed bids are used, the following requirements apply:
 - i. The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening bids;
 - ii. The invitation for bids, which will include any specifications and pertinent attachments, must define items or services in order for the bidder to properly respond;
 - iii. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
 - iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in the 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
 - v. Any or all bids may be rejected if there is a sound documented reason.
4. **Competitive Proposals.** This procurement method is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. This method will be 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 will provide a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - d. Contracts will be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - e. This district may use competitive proposal procedures for qualifications-based procurement of architectural and engineering 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, may only be used in procurement of architectural and engineering professional services. It cannot be used to purchase other types of services though architectural and engineering firms are a potential source to perform the proposed effort.
5. **Non-Competitive/Sole Source Proposals.** This method seeks solicitation of goods or services from only one source and may be used only when one or more of the following circumstances applies:
- a. The item is available only from a single source;
 - b. The public exigency or emergency for the procurement will not permit a delay resulting from competitive solicitation;
 - c. The federal agency or pass-through entity for use of the federal funds expressly authorizes non-competitive proposals in response to a written request from the district; or
 - d. After solicitation of a number of sources, competition is determined to be inadequate.

SCHOOL BUILDING PLAN REVIEWS AND INSPECTION

For purchases involving public works construction, the district will not advertise for bids for any school building construction project until the plans for such building(s) have been approved in accordance with Idaho Code §39-4113. All school construction or remodeling projects requiring plan review will be inspected by building inspectors certified in accordance with Idaho Code §39-4108, or by Idaho licensed architects or engineers to determine compliance with title 39, chapter 41 and the Idaho Uniform School Building Safety Act (title 39, chapter 80, Idaho Code).

Choose A or B below:

Option A:

The district elects to utilize the plan review services of [identify name of city or county that is eligible to provide building code enforcement/plan review services] for review of all public school building plans. The district will provide a written certification of its election for plan review services to the [identify local jurisdiction building department] and the Idaho Division of Building Safety (DBS)

Option B:

The district elects to utilize the plan review services of the Idaho Division of Building Safety (DBS) for review of all public school building plans. The district will provide a written certification of its election for plan review services to the [identify local jurisdiction building department] and the DBS.



LEGAL REFERENCE:

Idaho Code Sections

- 33-118A
- 33-601
- 33-1510
- 39-4108
- 39-4113
- 39-8001 *et seq.*
- 44-1001 *et seq.*
- 54-1900 *et seq.*
- 67-2800 *et seq.*

Federal Regulations

- 2 CFR Part 200, including Appendix II, “Contract Provisions for Non-Federal entity Contracts Under Federal Awards” (EDGAR)

ADOPTED:

AMENDED: