

MEMORANDUM

To: Board of Trustees

Twin Falls School District 411

From: Eva Craner, Director of Public Relations

Re: Policy Updates

Date: January 14, 2018

Second Reading:

ISBA Updates:

7400 Procurement Management System

7400P1 Procurement Under a Federal Award

7400P2 Procurement Methods Under a Federal Award

7400P3 Requirements and Restrictions for Procurement Under a Federal Award

7400P4 Federal Contract Administration

FINANCIAL MANAGEMENT

7400

Procurement Management System Purchasing

Authorization and Control

It is the policy of this District to conduct its purchasing program in a manner to ensure optimum use of District funds. The Board, or its designee, reserves the right to determine what is in the best interest of the District.

The Superintendent is authorized to direct expenditures and purchases within the limits of the detailed annual budget for the school year and pursuant to State purchasing and federal procurement requirements. Board approval for purchase of capital outlay items is required when the aggregate total of a requisition exceeds \$_____, except the Superintendent shall have the authority to make capital outlay purchases without advance approval when it is necessary to protect the interests of the District or the health and safety of the staff or students. The Superintendent shall establish requisition and purchase order procedures as a means of controlling and maintaining proper accounting of the expenditure of funds that align with State purchasing and federal procurement requirements. Staff members shall not obligate the District without express authority. Staff members who obligate the District without proper authorization may be held personally responsible for payment of such obligations.

Bids and Contracts

For micro-purchases up to \$3,000, purchases may be awarded without soliciting competitive bids if the District considers the price to be reasonable. The District shall maintain evidence of this reasonableness in the records of all micro-purchases. If small purchases are between \$3,000 and \$50,000 in cost, the District shall use price or rate quotations obtained from an adequate number of qualified sources and maintain quotations in purchasing records.

With the exception of the purchase of curricular materials, and in accordance with the requirements of Idaho Code, whenever the cost of any construction, repair, or improvement; or the acquisition, purchase, or repair of any equipment; or other personal property necessary for the effective operation of the District exceeds \$50,000 but does not exceed \$100,000, bids shall be called for by issuing written request to at least three vendors ~~public notice~~ as specified in statute as well as following federal procurement requirements. Specifications shall be prepared and be made available to all vendors interested in submitting a bid. The contract shall be awarded to the lowest responsible bidder, except that the Board may reject any bid, reject all bids, or publish notice to rebid the project. If, after calling for bids a second time, no satisfactory bid is received, the Board may proceed under its own direction, subject to the approval of the State Board of Education.

For expenditures exceeding \$100,000, bids shall be called for by issuing public notice as specified in statute as well as following federal procurement requirements. Specifications shall be published in the official newspaper of the District at least two weeks before the opening date, with the second notice to be published in the succeeding week at least seven 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 shall be made available upon request by any interested bidder.

When purchasing good and services pursuant to Idaho Code, and determining the most qualified bidder for award of the contract, the District, at its sole discretion, may consider not only the amount of the bids, but may also consider additional factors including, but not limited to, the relative experience, ability, references, and integrity of the bidders to do faithful and conscientious work and promptly fulfill the contract according to contract requirements.

Except where a Request for Proposals is advertised, in the event the District awards a contract to a bidder other than the lowest responsive bidder, the Board shall declare its reason or reasons on the record and shall communicate such reason or reasons in writing to all who have submitted a competing bid. The disappointed bidders shall have the right to submit a timely written objection, at which time the District shall stop all work on the project, and shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor. After completion of the review process, the political subdivision may proceed as it deems to be in the public interest.

The Superintendent shall establish bidding and contract awarding procedures that align with State purchasing and federal procurement requirements.

Sealed Bids (Formal Advertising)

For purchases over \$150,000, 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 of 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 following conditions apply:

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. 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.

If sealed bids are used, the following requirements apply:

1. 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.
2. 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;

3. All bids will be opened at the time and place prescribed in the invitation for bids.
4. A firm fixed price contract award must 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. Any or all bids may be rejected if there is a sound, documented reason.

Cooperative Purchasing

~~The District may cooperatively enter into contracts with one or more districts to purchase materials necessary or desirable for the conduct of the business of the District provided that the purchasing cooperative follows State purchasing and federal procurement requirements.~~

Personnel Conflicts of Interest

No employee will make any purchase or incur any obligations for or on behalf of the District from any private business, contractor, or vendor in which or with which the employee has a direct or indirect financial or ownership interest.

Purchases or contracted services from any private business or venture in which any employee of this District has a direct or indirect financial or ownership interest will be made on a competitive bid basis strictly in accordance with the following procedures:

1. The interested employee, the business, the contractor, or the vendor will fully disclose, in writing, the employee's exact relationship to the business, the contractor, or the vendor;
2. The affected business, the contractor, or the vendor may submit a bid in compliance with the specifications outlined by the District;
3. The interested employee will not be involved in any part of the bidding process, including but not limited to, preparing specifications, advertising, analyzing, or accepting bids; and
4. This policy will apply to any organization, fund, agency, or other activity maintained or operated by the District.

No employee will solicit gifts, gratuities, favors, prizes, awards, merchandise, or commissions as a result of ordering any items or as a result of placing any purchase order with a business, contractor, or vendor on behalf of the District nor accept anything of monetary value from a business, contractor, or vendor except for unsolicited gifts of \$50 or less in value.

Procurement Under a Federal Award

~~In addition to the conflicts of interest outlined above, 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 conflicts of interest~~

~~include instances where any of the following has a financial or other interest in or a tangible personal benefit from a firm considered for a contract:~~

- ~~1. The employee, officer, or agent;~~
- ~~2. Any member of his or her immediate family, including spouses, children, and parents;~~
- ~~3. His or her partner. For the purposes of this policy, “partner” shall mean an adult of the same sex or different sex with whom the employee, officer, or agent shares a non-marital intimate relationship and a common residence and with whom they mutually affirm that they share responsibility for each other’s common welfare; or~~
- ~~4. An organization which employs or is about to employ any of the parties listed above.~~

~~The following activities are prohibited:-~~

- ~~1. The purchase during the school day of any food or service from a District contractor or vendor for individual use;-~~
- ~~2. The removal of any food, supplies, equipment, or school property without proper authorization;-~~
- ~~3. Individual sales by District personnel of any school property, including used items.~~

Violations

~~Any District officer, employee, or agent who violates this policy may be subject to disciplinary action, including but not limited to a fine, suspension, or termination. Violations of law will be referred to the local, State, or federal authority having proper jurisdiction.-~~

Cross Reference: 7400P Procurement Under a Federal Award
7405 Public Works Contracting and Procurement
7407 Public Procurement of Goods and Services

Legal Reference: I.C. § 18-1351 Bribery and Corrupt Practices – Definitions
I.C. § 33-316 Cooperative Contracts to Employ Specialized Personnel
and/or Purchase Materials
I.C. § 33-402 Notice Requirements
I.C. § 33-601 Real and Personal Property – Acquisition, Use or Disposal
of Same
I.C. § 67-2805 Procurement of Public Works Construction
I.C. § 67-2806 Procuring Services or Personal Property
I.C. § 67-2806A Request for Proposal
I.C. § 74-401 et seq. Ethics in Government
2 C.F.R. § 180.220 Are Any Procurement Contracts Included as
Covered Transactions?

2 C.F.R. § 180.300 What Must I do Before I Enter into a Covered Transaction with Another Person at the Next Lower Tier?

2 C.F.R. § 200.317 Procurement by States

2 C.F.R. § 200.318 General Procurement Standards

2 C.F.R. § 200.319 General Procurement Standards

2 C.F.R. § 200.320 Methods of Procurement to be Followed

2 C.F.R. § 200.323(b) Contract Cost and Price

2 C.F.R. Part 200, Appendix II(1) Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Other Reference: Policies and Procedures Used Template, Idaho State Department of Education, <http://www.sde.idaho.gov/sped/funding/>

Policy History:

Adopted on:

Revised on:

Reviewed on:

FINANCIAL MANAGEMENT

7400P1

Procurement Under a Federal Award

In addition to its other policies and procedures regarding procurement, the District shall adhere to the following requirements when making procurements under a federal award. The District shall:

1. Ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be produced, and set forth those minimum essential characteristics and standards to which the material, product, or service must conform. The District will identify all requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals.
2. Prohibit the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in cases where applicable federal statutes expressly mandate or encourage geographic preference. 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
3. Provide a written method for conducting technical evaluations of the proposals received and for selecting recipients, including factors considered for the evaluation; who performs the evaluation, the number of evaluations performed, the timeframe for conducting any evaluations, and the selection of a vendor and whether another position reviews the evaluation.
4. Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
5. Avoid acquiring unnecessary or duplicative items;
6. Consider consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.
7. Maintain a list of prequalified persons, firms, or products which are used in acquiring goods and services, and include enough qualified sources to ensure maximum open and free competition.
8. Award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the 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. Maintain records sufficient to detail the history of procurement. These records will include:
 - A. Rationale for the method of procurement;
 - B. Selection of contract type;
 - C. Contractor selection or rejection; and
 - D. The basis for the contract price.

10. The use of a time and materials type contract is prohibited unless the District determines that no other contract is suitable. Time and materials type contract means a contract whose cost to a District is the sum of:
 - A. The actual cost of materials; and
 - B. The direct labor hours charged at hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. When this type of the contract is used, it will include a ceiling price that the contractor exceeds at his or her own risk. The District will assert a high degree of oversight over such contracts in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- ~~11. Be responsible for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.~~

12. The District will adhere to any additional procurement rules as applicable to specific federal programs, such as federal child nutrition programs.

Time and Effort Documentation

~~Charges to federal awards for salaries and wages must be based on records that accurately reflect the work performed. Such work shall be documented on Form 7400F.~~

Procedure History:

Promulgated on:

Revised on:

Reviewed on:

Procurement Methods Under a Federal Award

This procedure shall apply to purchases with federal funds.

Competitive Proposals

The technique of competitive proposals is normally conducted when more than one source submits an offer, and either a fixed price or cost-reimbursement type contract is to be 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:

1. 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;
2. Proposals must be solicited from an adequate number of qualified sources; and
3. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

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. This 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.

Contract/Price Analysis

The District performs a cost or price analysis in connection with every procurement action in excess of \$50,000, including contract modifications. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the District Superintendent must come to an independent estimate prior to receiving bids or proposals. 2 C.F.R. § 200.323(a).

When performing a cost analysis, the District Superintendent negotiates profit as a separate element of the price. To establish a fair and reasonable profit, consideration is 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.

Noncompetitive Proposals (Sole Sourcing)

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:

1. The item is available only from a single source;
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
3. The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District; or
4. After solicitation of a number of sources, competition is determined inadequate.

A cost or price analysis will be performed for noncompetitive proposals when the price exceeds \$50,000.

Full and Open Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with 2 C.F.R §200.319. 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 who 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.

Procedure History:

Promulgated on:

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Requirements and Restrictions for Procurement Under a Federal Award

The following shall be required in the case of procurement under a federal grant to ensure adequate competition.

Geographical Preferences Prohibited

The District shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. 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.

Prequalified Lists

The District shall 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 and free competition. Also, the District shall not preclude potential bidders from qualifying during the solicitation period.

Solicitation Language

The District shall ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall 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, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

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 shall be clearly stated; and identify all requirements which the offers must fulfill and all other factors to be used in evaluating bids or proposals.

Procedure History:

Promulgated on:

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Federal Contract Administration

The District shall maintain the following oversight requirements to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

The Superintendent shall be responsible for ensuring that contracts for services are adequately fulfilled and completed prior to submission of requests for payment to the Board of Trustees.

Procurement Under a Federal Award

In addition to the conflicts of interest outlined above, 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 conflicts of interest include instances where any of the following has a financial or other interest in or a tangible personal benefit from a firm considered for a contract:

1. The employee, officer, or agent;
2. Any member of his or her immediate family, including spouses, children, and parents;
3. His or her partner. For the purposes of this policy, “partner” shall mean an adult of the same sex or different sex with whom the employee, officer, or agent shares a non-marital intimate relationship and a common residence and with whom they mutually affirm that they share responsibility for each other’s common welfare; or
4. An organization which employs or is about to employ any of the parties listed above.

The following activities are prohibited:

1. The purchase during the school day of any food or service from a District contractor or vendor for individual use;
2. The removal of any food, supplies, equipment, or school property without proper authorization;
3. Individual sales by District personnel of any school property, including used items; and
4. Evaluate bids or proposals that use statutorily or administratively imposed state, local, or tribal geographical preferences, except those cases where federal statutes expressly mandate or encourage geographic preference. In instances where the District is seeking

architectural and engineering services, geographical location may be a selection criterion depending on the nature and size of the project

Cooperative Purchasing

The District may cooperatively enter into contracts with one or more districts to purchase materials necessary or desirable for the conduct of the business of the District provided that the purchasing cooperative follows State purchasing and federal procurement requirements.

Purchasing Cards

Any use of purchasing cards shall comply with Policy 7440.

Mandatory Disclosure

Upon discovery of any potential conflict, the District will disclose in writing the potential conflict to the federal awarding agency in accordance with applicable federal awarding agency policy.

Use of Intergovernmental Agreements

To foster greater economy and efficiency, the District enters into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

Use of Federal Excess and Surplus Property

The District shall consider the use of federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

Debarment and Suspension

The District may not subcontract with or award subgrants to any person or company that is debarred or suspended. For all contracts over \$25,000, the District shall verify that the vendor with whom the District intends to do business with is not excluded or disqualified. The Business Manager shall be responsible for verification by checking the excluded parties list on Sam.gov.

Settlement of Issues Arising Out of Procurements

The District alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the District of any contractual responsibilities under its contracts. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Protest Procedures to Resolve Dispute

The District maintains protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

Violations

Any District officer, employee, or agent who violates this policy may be subject to disciplinary action, including but not limited to a fine, suspension, or termination. Violations of law will be referred to the local, State, or federal authority having proper jurisdiction.

Procedure History:

Promulgated on:

Revised on:

Reviewed on: