

**COMPLIANCE WITH FEDERAL PURCHASING GUIDELINES**

In addition to its other policies and procedures regarding procurement, 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")*. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that 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 an entity considered for a contract. An employee, officer, agent, and board member may neither solicit nor accept gratuities, favors, or anything of monetary value exceeding \$50 from contractors or subcontractors. Any employee who solicits any gift, or who accepts an unsolicited gift with a value exceeding \$50, shall be subject to disciplinary action up to and including termination. Upon discovery of any potential conflict of interest, the district will disclose in writing the potential conflict to the State Department of Education (SDE) and/or federal awarding agency in accordance with applicable SDE or federal awarding agency policy. In addition, the district will disclose, in a timely manner, in writing to the SDE and/or the federal awarding agency, all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. *The superintendent or his/her designee will conduct any necessary investigation and submit it in writing to the SDE.*
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” means analyzing 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, proper classification of employees under the Fair Labor Standards Act, 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, the standards set forth in the district’s purchasing policies, including Policy 850 (Purchasing), Policy 850.30 (Purchasing Services or Personal Property), Policy 850.90 (Public Works Construction), and Policy 850P1 (Supplemental Purchasing Procedures), and the standards set forth in 2 CFR §§200.319 and 200.320.
13. 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. Non-competitive contracts to consultants that are on retainer contracts;
  - e. Organizational conflicts of interest;

- f. 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
  - g. 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 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 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. When establishing or amending prequalified lists, the district will consider objective factors that evaluate price and cost to maximize 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. 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 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 one hundred percent (100%) 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 one hundred percent (100%) 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.

**CONTRACT COST AND PRICE ANALYSIS**

The district will perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold. 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 conducted will depend on the facts surrounding the particular procurement transaction. As a starting point, designated district staff will make independent estimates before receiving bids or proposals.

When performing a cost analysis, the superintendent or designee 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. Documentation of all such cost and price analyses will be kept for three (3) years beyond the current year for review.



**LEGAL REFERENCE:**

Idaho Code Sections

18-1351 – Bribery and Corrupt Influences

33-316 – Cooperative Contracts to Employ Specialized Personnel and/or Purchase Materials

67-2801 *et seq.* – Purchasing by Political Subdivisions

Federal Regulations

2 CFR §200.317 – Procurement by States

2 CFR §200.318 – General Procurement Standards

2 CFR §200.319 – Competition

**CROSS-REFERENCE:**

850 – Purchasing

850P1 – Supplemental Purchasing Procedures

850.30 – Purchasing Services or Personal Property

850.90 – Purchasing Public Works Construction

**ADOPTED:**

**AMENDED:**

*\*Language in text set forth in italics is optional.*