

The board may enter into service contracts with independent contractors as necessary for the operation of the district. All contracts will be bid and entered into in accordance with all applicable state and federal law relating to public purchasing, as well as the district's policies relating to purchasing (Policy 850) and supplemental bidding procedures (Policy 851). 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 fifty thousand dollars (\$50,000) 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.

Except as set forth herein, this policy does not apply to service contracts that are exempt from competitive bidding requirements as set forth in Idaho Code §67-2803 and Policy 850.

BUS TRANSPORTATION SERVICES

The district will follow the requirements of Idaho Code §33-1510 for all bus transportation service contracts.

SERVICE CONTRACTS VALUED BETWEEN \$50,000 AND \$100,000

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) but not to exceed one hundred thousand dollars (\$100,000), 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 written means, either 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, and a reasonable time to respond, provided that except in the event of an emergency, such time will not be less than three (3) business days.

Objections

The board clerk (or other authorized official) 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, by either physical or electronic delivery, 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 bids 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 \$100,000

When the board contemplates entering into a service contract for other than professional or personal services, valued in excess of one hundred thousand dollars (\$100,000), 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 (or other authorized official) 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, and unless the bid is submitted in a form which substantially complies with the form provided by the district. 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 for award or, if a designee is authorized, for approval of the award. 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 or its designee may reject all bids and re-bid or, after finding it to be a fact, the board may pass a resolution declaring that the subject goods can be procured more economically on the open market. If two (2) or more bids are the same and both constitute the lowest responsive bids, the board or its designee 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.

REQUESTS FOR PROPOSALS

The board may utilize a request for proposal (RFP) process as set forth in this section as an alternative to the competitive bidding process required by Idaho Code §67-2806 when the board contemplates a procurement for services which:

- Fixed specifications might preclude the discovery of a cost-effective solution;
- A specific problem is amenable to several solutions; or
- Price is not the sole determining factor for selection.

Factors that may be considered in the evaluation of vendors in a RFP process include, but are not limited to:

- An innovative solution that is offered;
- Unique product features;
- Price;
- Vendor experience in the market;
- Financial stability of a vendor;
- Differences among vendors in their ability to perform contract requirements in a timely or efficient manner;
- Ability to meet product specifications;
- Product quality;
- Product performance records;
- Past performance by a vendor;
- Future product maintenance or service requirements; and
- Product warranties.

At a minimum, a RFP will state the instructions of the process, the scope of work for the services contemplated, the selection criteria, contract terms, and the scoring methodology applying relative weights to factors considered. Notification, solicitation and consideration of contests concerning the award of procurement pursuant to an RFP shall be in accordance with the minimum requirements established in Idaho Code §67-2806, subject to the selection criteria

established at the outset of each such procurement. Records compiled in the scoring process shall be made available for public inspection when a procurement recommendation is made to the board.

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 utilizing the following process:

1. If it is anticipated that the total professional service fee for a project will exceed fifty thousand dollars (\$50,000), excluding professional services contracts previously awarded for an associated or phased project, and for which the expenditure is otherwise exempt from the bidding process provided by law, the following process will be followed:
 - a. The board will provide a general description of the services being solicited and encourage persons or firms engaged in the services being solicited to submit statements of qualifications and past performance data;
 - b. Establish and make available to the public a request for qualifications that includes the criteria and the procedures to be used for the measurable scoring, ranking, and selection of qualified persons or firms to perform such services;
 - c. After receiving responses to a request for qualifications, score and rank the responding persons or firms based on their qualifications and demonstrated competence pursuant to the board's established criteria and procedures. The list of ranked respondents, including the scoring used to develop the ranking, shall be made available to the public. Some examples of selection criteria for consideration by the board may include, but are not limited to: a description of the firm, including location and longevity; past performance; project manager and key staff experience, education, and training; experience with similar projects; specific approach to project or assignment; proposed schedule, if applicable; and quality control procedures.
 - d. Select for negotiation the persons or firms whom the board determines to be the highest ranked (best qualified);
 - e. Negotiate with the highest ranked person or firm for a contract or an 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, schedule, and nature of the services required;
 - f. When unable to negotiate a satisfactory contract or agreement with the highest ranked person or firm, formally terminate negotiations and undertake negotiations with the

- next highest ranked person or firm, following the procedure prescribed in paragraph 1(e) above;
- g. When unable to negotiate a satisfactory contract or agreement with any of the selected persons or firms, recommence negotiations as prescribed in paragraphs 1(e) or (f) above until a contract or agreement is reached or cancel the procurement.
 - h. The board will 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
2. In fulfilling the selection requirements prescribed in paragraphs 1(a) through (h) above, the board may establish and select from a list of two (2) or more persons or firms selected and preapproved for consideration by the board. In establishing a preapproved list, the board will publish notice as set forth in paragraph 1(h) above. When selecting from such list, no notice shall be required.
 3. Any list established under paragraph 2 above shall remain valid for a maximum of five (5) years and may be canceled by the board prior to the list's expiration if the board determines that cancellation would be in the public's interest.
 4. If the anticipated professional service fee for these services is anticipated to be less than fifty thousand dollars (\$50,000), the board may use the guidelines set forth in paragraph 1 above, or establish its own 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 board to be fair and reasonable after considering the estimated value, scope, complexity, schedule, and nature of services required.
 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 and in accordance with all provisions of Idaho Code §59-1026, 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.

JOINT OR COOPERATIVE 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, other government entities or associations thereof, or any agency of the federal government, by entering into a cooperative agreement or joint exercise of powers agreement with that entity, pursuant to Idaho Code §§67-2807, 67-2326 through 67-2333, . The vote on the decision to enter into a cooperative or joint exercise of powers agreement 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.

The board may also participate in cooperative purchasing programs established by any association that offers its goods or services as a result of competitive solicitation processes. Goods or services procured by participation in such cooperative agreements or programs shall be deemed to have been acquired in accordance with the requirements of Idaho law and this policy.

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).

COMPLIANCE WITH ANTI-BOYCOTT AGAINST ISRAEL ACT

For all contracts with a total potential value of \$100,000 or more executed on or after July 1, 2021, the board acknowledges that it will not enter into a contract with a company to acquire or dispose of services unless the contract includes a written certification that the company is not currently engaged in, and will not for the duration of the contract engage in, a boycott of goods or services from Israel or territories under its control. This requirement does not apply to companies with fewer than ten (10) employees.

For purposes of this policy, the terms “boycott Israel” or “boycott of the state of Israel,” and “company” shall have the meanings set forth in Idaho Code §67-2346(3).

Upon discovering that a contract fails to comply with this policy, the board will have a period of ninety (90) days to obtain the necessary certification. After such time, any contract continuing to violate the provisions of the Anti-Boycott Against Israel Act shall be void as against public policy.



LEGAL REFERENCE:

Idaho Code Sections

- 33-601 – Real and Personal Property – Acquisition, Use or Disposal of the Same
- 67-2320 – Professional Service Contracts with Design Professionals, Construction Managers, and Professional Land Surveyors
- 67-2326 through 67-2333 – Joint Exercise of Powers
- 67-2800 *et seq.* – Purchasing by Political Subdivisions
- 54-1901 *et seq.* – Publics Works Contractors
- 74-101 *et seq.* – Idaho Public Records Act

Federal Regulations

- 2 CFR Part 200 (EDGAR)

ADOPTED: March 15, 2022

AMENDED: