



ESSER Fund Purchases

Bidding, Reporting and
Record-keeping Requirements

REQUIREMENTS OF ADMINISTRATION AND SCHOOL
BOARDS TO ENSURE PROCEDURAL COMPLIANCE.

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Federal Statement of Intent

- ▶ The United States Department of Education (“USDE”) has defined the intent of all three ESSER grants as: ***to prevent, prepare for, or respond to the COVID-19 pandemic, including its impact on the social, emotional, mental health, and academic needs of students.***

Use of Elementary and Secondary School Emergency Relief (“ESSER “) Funds and Deadlines to Obligate

- ▶ A district may use ESSER funds for the broad range of activities listed in section 18003(d) of the CARES Act, section 313(d) of the CRRSA Act, and section 2001(e) of the ARP Act. Although the lists of allowable uses of funds are not identical, any of the ESSER funds (ESSER I, ESSER II, or ARP ESSER) may be used to support all of the allowable uses of funds listed in any of the ESSER programs. The allowable uses of funds are summarized in the following slide.
- ▶ Districts have until **September 30, 2022**, to obligate their ESSER I and GEER I funds.
- ▶ Districts have until **September 30, 2023**, to obligate their ESSER II and GEER II funds.
- ▶ Districts have until **September 30, 2024**, to obligate their ARP ESSER funds.

Authorized Activities and Purchases

A broad range of activities and purchases are authorized under the three ESSER bills. These are summarized by the following 15 activities:

- ▶ 1. Any activity authorized by the ESEA, including the Native Hawaiian Education Act and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.).
- ▶ 2. Any activity authorized by the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.).
- ▶ 3. Any activity authorized by the Adult Education and Family Literacy Act (AEFLA) (29 U.S.C. 3271 et seq.).
- ▶ 4. Any activity authorized by the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins V) (20 U.S.C. 2301 et seq.).
- ▶ 5. Any activity authorized by subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (McKinney-Vento) (42 U.S.C. 11431 et seq.).
- ▶ 6. Coordinating preparedness and response efforts of LEAs with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to COVID-19.
- ▶ 7. Providing principals and other school leaders with the resources necessary to address the needs of their individual schools.

Authorized Activities and Purchases (Cont.)

- ▶ 8. Activities to address the unique needs of low-income children or students, students with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, including how outreach and service delivery will meet the needs of each population.
- ▶ 9. Developing and implementing procedures and systems to improve the preparedness and response efforts of LEAs.
- ▶ 10. Training and professional development for staff of the LEA on sanitation and minimizing the spread of infectious diseases.
- ▶ 11. Purchasing supplies to sanitize and clean the facilities of the LEA, including buildings operated by such LEA.
- ▶ 12. Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the IDEA and ensuring other education services can continue to be provided consistent with all Federal, State, and local requirements.
- ▶ 13. Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the LEA that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.
- ▶ 14. Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.
- ▶ 15. Planning and implementing activities related to summer learning and enrichment and supplemental after-school programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children and youth in foster care.

Authorized Activities and Purchases (cont.)

- ▶ 16. Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by
 - i. administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction;
 - ii. implementing evidence-based activities to meet the comprehensive needs of students;
 - iii. providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment; and
 - iv. tracking student attendance and improving student engagement in distance education
- ▶ 17. School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.
- ▶ 18. Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.
- ▶ 19. Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.
- ▶ 20. Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.

District Plans Required by ESSER

ARP ESSER III awards require the preparation of two distinct district plans (ESSER I and ESSER II have no plan requirements):

- ▶ 1. District Use of Funds Plan (submit to SDE no earlier than 90 days from receipt of ARP ESSER award); and
- ▶ 2. District Safe Return to In-Person Instruction and Continuity of Services Plan (make public no later than 30 days after receiving ARP ESSER funds).

[Note – preparation of these plans may be funded with ESSER funds.]

The requirements of these plans are summarized below:

District Use of Funds Plan

Following are the characteristics of the District Use of Funds Plan:

- ▶ Districts must engage in meaningful consultation with stakeholders and give the public an opportunity to provide input in the development of its plan for the uses of ARP ESSER III funds.
- ▶ Districts must specifically engage in meaningful consultation with students; families; school and district administrators; and teachers, principals, school leaders, other educators, school staff, and organizations and stakeholders representing the interests of children with disabilities, English language learners, children experiencing homelessness, children in foster care, migrant students, incarcerated children, and other underserved students.
- ▶ The plan must be in an understandable and uniform format; to the extent practicable, written in a language that parents can understand or, if not practicable, orally translated; and, upon request by a parent who is an individual with a disability, provided in an alternative format accessible to that parent.

District Use of Funds Plan (cont.)

At a minimum, the plan must include a description of:

- ▶ 1. The extent to which and how the funds will be used to implement prevention and mitigation strategies that are, to the greatest extent practicable, consistent with the most recent CDC guidance on reopening schools, in order to continuously and safely open and operate schools for in-person learning.
- ▶ 2. How the district will use the funds it reserves under the ARP Act to address the academic impact of lost instructional time through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year; and how it will spend its remaining ARP ESSER funds consistent with Act.
- ▶ 3. How the district will ensure that the interventions it implements, including but not limited to the interventions to address the academic impact of lost instructional time, will respond to the academic, social, emotional, and mental health needs of all students, and particularly those students disproportionately impacted by the COVID-19 pandemic, including students from low-income families, students of color, English learners, children with disabilities, students experiencing homelessness, children in foster care, and migratory students.

District Safe Return to In-Person Instruction and Continuity of Services Plan

Following are the characteristics of the District Safe Return to In-Person Instruction and Continuity of Services Plan:

First, the district's plan must include how it will maintain the health and safety of students, educators, and other school and LEA staff, the extent to which it has adopted policies, and a description of any such policies on each of the CDC's safety recommendations.

► The current CDC recommendations include:

- universal wearing of masks by unvaccinated persons when indoors – not required when outside;
- modifying facilities to allow for physical distancing (e.g., use of cohorts/podding);
- handwashing and respiratory etiquette;
- cleaning and maintaining facilities;
- including improving ventilation;
- contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments;
- diagnostic and screening testing;
- efforts to provide vaccinations to school;
- appropriate accommodations for children with disabilities with respect to health and safety policies; and
- coordination with State and local health officials.

District Safe Return to In-Person Instruction and Continuity of Services Plan (cont.)

Second, the plan must describe how the district will ensure continuity of services, including but not limited to services to address students' academic needs and students' and staff social, emotional, mental health and other needs, which may include student health and food services.

The plan must also be reviewed and, as appropriate, revised every six months until September 30, 2023, including stakeholder input and public comment. If the LEA revises its plan, the revised plan must address each of the aspects of safety currently recommended by the CDC at the time of the revision or, if the CDC has updated its safety recommendations at the time the LEA is revising its plan, each of the updated safety recommendations.

A plan is required of all districts, including those who have already returned to in-person instruction. A District that developed a plan prior to enactment of the ARP Act that meets the requirements for stakeholder input and public comment, and is posted to the LEA's website, but does not address each of the required aspects of safety recommended by CDC, as part of the required 6-month periodic review must revise its plan consistent with these requirements no later than six months after it last reviewed its plan. Since most districts developed their initial plans in the fall, if they have not been reviewed in the past six months, the plan must be reviewed and revised at this time.

All plans must be in an understandable and uniform format; to the extent practicable, written in a language that parents can understand or, if not practicable, orally translated; and, upon request by a parent who is an individual with a disability, provided in an alternative format accessible to that parent.

General Procurement Standards

(2 CFR §§200.317 to 200.327)

Generally, districts using federal ERRER funds to acquire goods or services must satisfy the following broad guidelines:

- ▶ The non-Federal entity must have and use documented procurement procedures, consistent with State, and local laws and regulations and applicable federal standards, for the acquisition of property or services when using ESSER funds. A district's documented procurement procedures must conform to the procurement standards identified in 2 CFR §§ 200.317 through 200.327, which are summarized below.
- ▶ Regarding record-keeping, districts must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

Competitive Procurement:

Requests for Bids and Requests for Proposals

- ▶ All procurement transactions for the acquisition of property or services authorized under a Federal award must be conducted in a manner providing full and open competition.
- ▶ Though there are some very specific recommendations identified in the federal regulations that encourage competition, typical district procurement policies that follow Idaho state law for the acquisition of goods, services and public works construction will comply with the vast majority of the federal standards.

Informal Procurement of Micro-Purchases

Purchases less than \$50K

- ▶ Contracts or purchases wherein expenditures are less than fifty thousand dollars (\$50,000), may be entered into by a district without following formal bidding requirements, provided that such contracts or purchases shall be guided by the best interests of the district as determined by its board of trustees. I.C. § 67-2803(2); 2 CFR § 200.320(a).
- ▶ Rationale: Districts may use informal procurement methods to expedite the completion of its transactions and to minimize the associated administrative burden and cost.

Additional Noncompetitive Procurement Circumstances

Under 2 CFR § 200.320(c), a district may, where consistent with its policies and procedures, use noncompetitive procurement if **any** of the following conditions is met:

- ▶ 1. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$50,000); OR
- ▶ 2. The item is available only from a single source; OR
- ▶ 3. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation; OR
- ▶ 4. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; OR
- ▶ 5. After solicitation of a number of sources, competition is determined inadequate.

Consistent with 2 CFR § 200.320(c)(3), a district may determine that its response to the COVID-19 pandemic qualifies as a public exigency or emergency that does not permit the delay that would result from competitive bidding (item no.3, above). Under these circumstances, and to the degree doing so is consistent with the district's policies and procedures, it may use noncompetitive procurement. **Submit an ESSER Request for Exemption from Competitive Procurement form to the Idaho SDE.**

Procuring Services or Personal Property

Value greater than \$50K and less than \$100K

Solicitation of Vendors

- ▶ To encourage competition, a district's solicitation for bids must be supplied to no fewer than three (3) vendors by written means, either by electronic or physical delivery. The solicitation shall describe the personal property or services to be purchased or leased in sufficient detail to allow a vendor dealing in such goods or services to understand what the political subdivision seeks to procure.
- ▶ When written bids have been received, by either physical or electronic delivery, they shall be compiled and submitted to the board or the board's authorized official to approve the responsive bid proposing the lowest procurement price, or to reject all bids and publish notice for bids, as before.
- ▶ If two (2) or more bids are the same and the lowest responsive bids, the authorized decision-maker may accept the one (1) it prefers.

Procuring Services or Personal Property

Value greater than \$100K

Via Publication requesting Sealed Bids

- ▶ The purchase or lease shall be made pursuant to an open competitive sealed bid process with the procurement to be made from the qualified bidder submitting the lowest bid price complying with bidding procedures and meeting the specifications for the goods and/or services sought to be procured.
- ▶ Two (2) Published notices soliciting bids shall provide at least 14 days notice of the request for bids, and setting the date, time and place for the opening of bids. The notice shall succinctly describe the personal property and/or service to be procured. Copies of specifications, forms, etc., shall be made available to any interested bidder.
- ▶ Unless using the request for proposal procedure, the board must accept the lowest qualified bid.

Requests for Proposals

I.C. § 67-2806A

The published notice and solicitation requirements of Section 67-2806 still apply, except, rather than being limited to the low bid, the board may consider additional factors, which are provided to the bidders, to determine the successful bidder, these may include, but are not limited to:

- ▶ (a) An innovative solution that is offered;
- ▶ (b) Unique product features;
- ▶ (c) Price;
- ▶ (d) Vendor experience in the market;
- ▶ (e) Financial stability of a vendor;
- ▶ (f) Differences among vendors in their ability to perform contract requirements in a timely or efficient manner;
- ▶ (g) Ability to meet product specifications;
- ▶ (h) Product quality;
- ▶ (i) Product performance records;
- ▶ (j) Past performance by a vendor;
- ▶ (k) Future product maintenance or service requirements; and
- ▶ (l) Product warranties.

Procuring Public Works Construction: Value greater than \$50K, but less than \$200K

- ▶ The solicitation for bids for the public works construction to be performed shall be supplied to no fewer than three (3) owner-designated licensed public works contractors by written means. The solicitation shall describe the construction work to be completed in sufficient detail to allow an experienced public works contractor to understand the construction project the political subdivision seeks to build and submit a competitive bid.
- ▶ When written bids have been received, they shall be submitted to the board, or the designee of the board who shall present the lowest responsive bid to the governing board for approval or, if authorized, the designee may approve the bid. The board or the board's designee are required to approve the responsive bid proposing the lowest procurement price; alternatively, it may reject all bids and publish notice for bids, as before.
- ▶ If two (2) or more price quotations offered by different licensed public works contractors are the same and represent the lowest responsive bid, the board or the board authorized official may select the bid it prefers.

Procuring Public Works Construction

Value greater than \$200K, no prequalification

- ▶ Competitive bidding is open to bids from all licensed public works contractors desiring to bid on the project. The district may only consider the amount bid, bidder compliance with administrative requirements of the bidding process, and whether the bidder holds the requisite license; and shall award the project to the lowest qualified, responsive bid.
- ▶ The request for bids shall be published two (2) times providing two (2) weeks notice of the date the bids will be opened. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, etc. shall be provided upon request and payment of a reasonable plan copy fee by any interested bidder.
- ▶ After the sealed bids are received, they shall be opened in public at the place and time designated , thereafter to be compiled and submitted to the board for award or, if a designee is authorized, for approval of the award.

Procuring Public Works Construction

Value greater than \$200K, with prequalification

- ▶ Competitive bidding procedures shall be open to licensed public works contractors who satisfy the district's preliminary supplemental qualifications requirements. As a result, the solicitation for bids shall consist of two (2) stages, the first stage wherein the preliminary qualifications are assessed by the district; followed by the second stage wherein bids are accepted only from the list of prequalified contractors.
- ▶ Notice of the prequalification stage of the bidding process shall be given in the same manner that notice of competitive bidding is otherwise provided requesting competitive bids, providing a specific date and time by which **written** qualification statements must be received. Districts may establish prequalification standards premised upon demonstrated technical competence, experience constructing similar facilities, prior experience with the district, available nonfinancial resources, equipment and personnel relevant to the subject project, and the contractor's overall performance history. The request shall include the district's standards for evaluating the bidder's qualifications.
- ▶ Next, the bidding stage shall set the time, date and place for the public opening of bids. A notice soliciting bids shall be transmitted to the prequalified bidders at least fourteen (14) days before the date of opening the bids. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, etc., shall be made available upon request and payment of a reasonable plan copy fee by any eligible bidder.
- ▶ The board's designee will then compile the list and submit to the board for award or, if authorized, approve the award. If identical bids are received, the governing board may choose the bidder it prefers.

Selecting Public Works Professionals

I.C. 67-2320

In Idaho, school districts and their agents are required to make selections for professional engineering, architectural, landscape architecture, construction management, and professional land surveying services on the basis of qualifications and demonstrated competence, and shall negotiate contracts or agreements for such services. This requires a published selection process where for fees in excess of \$50K. The process is similar to the pre-qualification of public works contractors.

- ▶ First, establish and make available to the public a request for qualifications that includes the criteria and the procedures to be used for measurable scoring, ranking, and selection of qualified persons or firms to perform such services. This will include 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.
- ▶ Next, after receiving responses to the request for qualifications, the district will score and rank the responding persons or firms based on their qualifications and demonstrated competence pursuant to the district'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 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;
- ▶ Finally, select for negotiation the persons or firms the district determines to be the highest-ranked (best qualified); and begin contract negotiations with the highest-ranked person or firm for a contract to perform such services at a price determined by the board to be reasonable and fair after considering the estimated value, scope, complexity, schedule, and nature of the services required. If negotiations with the first firm fail, the district will commence negotiations with its second choice, and may repeat this process until an agreement is reached.

Additional Federal Requirements

2 CFR §§ 200.318-200.326

In addition to the procedural requirements identified above, when awarding contracts using federal funds, the following specific federal requirements must be followed:

- ▶ District's must take all necessary affirmative steps to assure that small and minority businesses, women's businesses, and labor surplus area firms are used when possible. (§200.321)
- ▶ As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all sub-awards including all contracts and purchase orders for work or products under this award. (§200.322)
- ▶ Where applicable, procurement must only items designated in guidelines of the EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. (§200.323)
- ▶ The district must perform a cost analysis in connection with every procurement action in excess of \$150K including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals. (§200.324)
- ▶ The district must make available, upon request of the Idaho SDE, technical specifications on proposed procurements where the SDE believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. (§200.325)
- ▶ For construction or facility improvement contracts or subcontracts exceeding \$150K, the SDE may accept the bonding policy and requirements of the district provided that the SDE has made a determination that their interest is adequately protected. If such a determination is not made, the following applies: (a) each bidder must submit a 5% bid guarantee; (b) a 100% performance bond in the amount of the contract price (to fulfill contractor's obligations); and (c) a similar 100% payment bond (to ensure payment of all labor and material for the work). (§200.326)
- ▶ The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200 — *Contract Provisions for non-Federal Entity Contracts Under Federal Awards*. (§200.327)

Contract Provisions for non-Federal Entity Contracts Under Federal Awards

- ▶ These specific contract provisions exceed the scope of this seminar, however, be aware that these provisions are required in all procurement contracts using federal funds, and be sure to take the necessary steps to ensure they are included.

Federal Requirements Waived Under ESSER

- ▶ The Buy American Act provisions set forth at 2 CFR § 200.322 do NOT apply to procurements using ESSER and GEER grants. They do apply, however, to procurements using ESSER II, GEER II and ARP ESSER awards.
- ▶ As stated above, non-competitive procurement procedures apply to any of the following circumstances: (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$50,000); (2) The item is available only from a single source; (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation [*after approval from the ISDE*]; (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or (5) After solicitation of a number of sources, competition is determined inadequate.

Reporting Requirements Summary Statement

Generally, auditors will request and review documentation to verify that program funds were obligated in compliance with fiscal, program, and other applicable grant requirements. Auditors will review the district's financial management system, internal controls, cash management, budgetary controls, allowability of costs, period of availability, and set-asides. Additionally, auditors will request and review source documentation supporting both payroll and non-payroll costs to determine that expenditures charged to grant funds were allowable, allocable, reasonable, and necessary to meet program requirements. At a minimum, districts should maintain the following documentation to demonstrate compliance with program requirements.

- ▶ • Policies and procedures
- ▶ • Detailed general ledgers and payroll journals compliant with Idaho SDE Funding and Fiscal Accountability Standards.
- ▶ • Procurement records (e.g., contracts, leasing agreements)
- ▶ • Personnel records including job descriptions, salary authorizations, payroll and time and effort records (if applicable) reconciled to payment
- ▶ • Needs assessment and/or planning documents describing the need for the use of program funds
- ▶ • Inventory records of equipment purchased with grant funds
- ▶ • Source documentation supporting expenditure of grant funds (e.g., purchase orders with accompanying invoices, receipts, canceled check/check registry/screenshot from accounting system, proof of electronic payment/payment screenshots, (as applicable, indicating that payment was made)
- ▶ • Spreadsheet or other documents with relevant supporting documentation reconciling payment documentation to dollar amount that includes description of how funds were used, a unique payment number, the date payment was recorded, and a signatory approval



Any Questions
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