

## **CHECKLIST FOR PROCURING GOODS AND SERVICES USING FEDERAL FUNDS**

The following competitive bidding checklists apply where districts are using federal funds to purchase or procure goods, services or property.<sup>1</sup>

- 1. Requests for Bids for goods or services.** School districts using federal funds for procurement are required to award bids following a competitive bid process; which requirement will be satisfied by following Idaho's statutes governing purchases by Idaho political subdivisions (2 CFR Parts 200.317 to 200.327; *I.C. § 67-2806*).

- a. Purchases Between \$50K and \$100K – Solicitations for Bids.**

- (i) The district must send to at least three qualified vendors a written solicitation for bids. The solicitation must describe the goods or services to be purchased or leased in sufficient detail to allow the vendor to understand what the district seeks to procure.
- (ii) The solicitation must also identify the electronic or physical delivery method or methods authorized to submit a bid, the date and time by which a bid proposal must be received by the district's point-of-contact, and shall provide a reasonable time to respond to the solicitation, but no less than three business days unless an emergency exists justifying an earlier response.
- (iii) Upon receipt of the written bids, the bids are compiled and submitted to the board or its designated administrator who shall approve the responsive bid submitting the lowest price. Alternatively, the board may reject all bids and republish notice for bids, as before.

- b. Purchases Greater Than \$100K B - Open Competitive Sealed Bid Process.**

- (i) Such purchases or leases must be made pursuant to an open competitive sealed bid process, and the bid must be awarded to the qualified bidder submitting the lowest bid that complies with bidding procedures, and also satisfies the specifications of the identified goods and/or services. If two or more bids are the same and the lowest responsive bids, the governing board or its designee may accept the one it chooses.
- (ii) Two notices requesting bids must be published in the district's official newspaper. The first notice must be published at least two weeks before the date for opening bids, the second notice is published at least seven days before the date that bids are scheduled to be opened. The notice requesting bids shall succinctly describe the goods and/or services to be procured. The request for bids shall set a date, time and place for the opening of bids. Copies of specifications, bid forms, bidder's

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<sup>1</sup> Please note, the following checklists identify the steps to begin the procurement process, and the selection of the prevailing bidder. It does NOT include all circumstances which may arise, including circumstances where a bidder objects to the bid specifications, to bidding procedures or to the award of the bid. Please see the referenced statutes when addressing such circumstances.

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instructions, contract documents, and general and special instructions are made available upon request by any interested bidder.

- (iii) After opening and reviewing the bids, the board or its designee may, in its discretion, reject all bids and re-bid or, after finding it to be a fact, the board may pass a resolution declaring that the goods or services can be procured more economically on the open market. In lieu of the published bidding procedure described above, the board may, in its discretion, preauthorize the purchase of *equipment* at a public auction.
- (iv) Finally, if the board chooses to award a competitively bid contract for goods or services to a bidder other than the low bidder, the board must declare its reason or reasons in open session and communicate such reason or reasons in writing to all who have submitted a competing bid. Because the low bidder has the right to object within seven days, the contract to procure the goods or services may not be signed until after the seven-day period expires.

### **2. Requests for Proposals – Selecting Goods and Services Based on Multiple Criteria.**

The request for proposals procedure may be used instead of the request for bids procedure identified above, and allows a district to select the prevailing bidder from several factors, and is not limited to accepting the lowest bid (*I.C. § 67-2806A*).

The notice, solicitation and consideration of any objections concerning the award of procurement will be in accordance with the minimum requirements established in *section 67-2806, Idaho Code*, with the exception of the selection criteria identified by the district 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 governing board.

The Request for Proposals procedure is available for goods or services for which:

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

The request for proposal must explain how the selection process will work, describe the goods or services requested, describe the selection criteria, the contract terms and explain the scoring methodology applying relative weights to factors that the board will consider when making the award. Such factors 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;

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- 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 warranty.

### **3. Requests for Qualifications – Selection of Public Works Design Professionals.**

Idaho school districts are required to make selections for professional engineering, architectural, landscape architecture, construction management, and professional land surveying services, on the basis of their qualifications and demonstrated competence, and shall negotiate contracts or agreements for such services with the most qualified professional.

#### **a. Anticipated Fee Greater Than \$50K.** When the anticipated professional fee is greater than \$50k, the following selection process must be followed:

- 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.

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- b. Anticipated Fee LESS Than \$50K.** When the anticipated professional fee is less than \$50k, a district may use the guidelines set forth above, or it may 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.
  - c. Continuation of a Phased Project.** When a district has previously awarded a professional services contract to a professional entity for an associated or phased project, the district may, at its discretion and in accordance with all provisions of *section 59-1026, Idaho Code*, negotiate an extended or new professional services contract with that person or firm.
- 4. Procuring Public Works Construction.** Idaho Code § 67-2805.
- a. Value greater than \$50K, but less than \$200K – solicitation for bids procedure** (*I.C. § 67-2805(1)*).

    - The solicitation for bids for the public works construction to be performed shall be supplied to no fewer than three 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 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.
  - b. Value greater than \$200K, no prequalification.** (*I.C. § 67-2805(2)(a)*).

    - Under this procedure, 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 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

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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.

**c. Value greater than \$200K, with prequalification. (I.C. § 67-2805(2)(b)).**

- 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 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 board may choose the bidder it prefers.

**5. Exceptions to the Competitive Bidding Requirements.**

**a. Per 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:**

- (i) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$50,000); OR
- (ii) The item is available only from a single source; OR
- (iii) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation; OR

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- (iv) 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
- (v) 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. **Be sure to submit an ESSER Request for Exemption from Competitive Procurement form to the Idaho SDE.**

**b. State Bidding Requirement Exclusions (I.C. § 67-2803).** In addition to the above, competitive bidding requirements do *not* apply to the following circumstances:

- (i) Duplication of a contract for like goods or services that has been competitively bid by the State, a State political subdivision, or a federal agency;
- (ii) ***For expenditures that are less than \$50K***, and are determined by the Board to be in the District's best interests;
- (iii) Payment of wages to any employee, official or agent of the District;
- (iv) ***Procurement of personal or professional services*** to be performed by an independent contractor of the District (i.e., accountant, attorney);
- (v) ***Procurement of an interest in real property***;
- (vi) Procurement of insurance;
- (vii) Costs of participation in a joint powers agreement with other units of government;
- (viii) Procurement of *used* personal property;
- (ix) ***Procurement from federal government general services administration (GSA) schedules or federal multiple award schedules (MAS)***;
- (x) ***Procurement of personal property or services through contracts entered into by the division of purchasing of the department of administration of the state of Idaho***;
- ...
- (xiv) Procurement of repair for heavy equipment;
- (xv) Procurement of software maintenance, support and licenses of an existing system or platform that was bid in compliance with state law;
- (xvi) Procurement of public utilities; or
- ...
- (xviii) Procurement of used equipment at an auction if authorized by the governing board.

(Non-pertinent portions omitted; emphasis added.)

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**6. Federally Required Bidder Qualifications and other Considerations When Awarding Contracts.**

- a. 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)
- b. 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)
- c. 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)
- d. 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)
- e. 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)
- f. 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 the Federal 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)
- g. 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)

**7. Federally Required Contract Terms Where Procurement Utilizes Federal Funds.** In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- a. Contracts for more than the simplified acquisition threshold currently set at \$150,000, must **address administrative, contractual, or legal remedies** in instances where

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- contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- b.** All contracts in excess of \$10,000 must address **termination for cause** and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
  - c. Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
  - d. Davis-Bacon Act,** as amended (40 U.S.C. §§ 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
  - e. Contract Work Hours and Safety Standards Act** (40 U.S.C. §§ 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and

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a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- f. Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR Part 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- g. Clean Air Act** (42 U.S.C. §§ 7401–7671q.) and the **Federal Water Pollution Control Act** (33 U.S.C. §§ 1251–1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act** (42 U.S.C. § 6201).
- i. Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- j. Byrd Anti-Lobbying Amendment** (31 U.S.C. § 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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- k. See § 200.322 **Procurement of recovered materials**, at Section 6(b), above.