

**Provo City School District**  
**Policy Series 6000 Finances and Operations**



6212 P1

## **Procurement for Construction**

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### **I. School Construction Bidding Process**

#### ***A. Notice***

The school district shall advertise for bids on the school construction or alteration project at least 10 days before the bid due date. The advertisement shall be published in a newspaper having general circulation in any city or county that would be affected by the proposed project. In addition, the notice shall be posted for at least 10 consecutive days before the deadline for bid submission on the District's main web site or on a state web site that is owned, managed by, or provided under contract with, the Utah Division of Purchasing and General Services.

The advertisement shall:

1. Identify the District as the entity inviting the bids;
2. Provide information about how to contact the District;
3. State the date of the opening and closing of the invitation for bids;
4. Provide information on how to obtain a copy of the invitation for bids;

5. Include a general description of the building project;
6. Require sealed proposals for the building project in accordance with plans and specifications furnished by the Board of Education;
7. State where and when the proposals will be opened;
8. Reserve the right of the Board of Education to reject any and all proposals; and
9. Require a certified check or bid bond of not less than 5% of the bid to accompany the bid.

#### ***B. Walk Through***

For significant construction projects, contractors submitting bid proposals will be provided or may ask for a walkthrough with the facilities department.

#### ***C. Opening and Acceptance of Bids and Award of Contract***

The bid committee, including the Procurement Officer and Facilities Director, shall meet at the time and place specified in the advertisement and publicly open and read all received proposals. If satisfactory bids are received, the Procurement Officer shall award the contract to the lowest responsible bidder.

#### ***D. Rejection of all bids***

If none of the proposals are satisfactory, all shall be rejected and the district shall again advertise in the manner provided in this policy. If, after advertising a second time no satisfactory bid is received, the Board of Education may proceed under its own direction with the required project.

The District may not itself bid on school construction or alteration projects over the \$80,000 threshold except that if no acceptable bids are received in the bidding process it may use its own resources for the project.

#### ***E. Required security/Performance bonds***

The District shall require payment and performance bonds of the successful bidder.

The check or bond required to be submitted with the bid shall be drawn in favor of the Provo City School District. If the successful bidder fails or refuses to enter into the contract and furnish the additional bonds required under this section, then the bidder's check or bond is forfeited to the District.

In additions, the District may require in the proposed contract that up to 5% of the contract price be withheld until the project is completed and accepted by the Board of Education. If money is withheld, it will be placed in an interest bearing account with the interest accruing for the benefit of the contractor and subcontractors. This money shall be paid upon completion of the project and acceptance by the District.

## ***F. Prohibition of Board Member Interest in School Construction***

Board members may not have a direct or indirect financial interest in the construction project contract.

## **II. Construction Bonds and Security**

### ***A. Bid Security Requirements***

Bid security in an amount equal to at least 5% of the amount of the bid shall be required for all competitive bidding for construction contracts. Bid security shall be a bond provided by a surety company authorized to do business in this state, the equivalent in cash, or any other form satisfactory to the District. The District may waive the requirement of a bid bond to the extent allowed by rules of the State procurement policy in circumstances where the Procurement Officer determines that such bond is unnecessary to protect the District.

When a bidder fails to comply with the requirement for bid security described in the invitation for bids, the bid shall be rejected unless, pursuant to rules of the State Procurement Policy, the District determines that the failure to comply with the security requirements is non-substantial.

After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in Policy 6210. If a bidder is permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid security.

When issuing an invitation for a bid, neither the Board of Education nor the Procurement Officer may require a person or entity who is bidding for a contract to obtain a bond from a specific insurance or surety company, producer, agent, or broker.

### ***B. Required Bonds***

When a construction contract is awarded by the District, the contractor to whom the contract is awarded shall deliver the following bonds or security to the District, which shall become binding on the parties upon the execution of the contract:

- a performance bond satisfactory to the District that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the District; and
- a payment bond satisfactory to the District that is in an amount equal to 100% of the price specified in the contract and is executed by a surety company authorized to do business in this state or any other form satisfactory to the District, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.

Neither the Board of Education nor the Procurement Officer may require a contractor to whom a contract is awarded to obtain a performance or payment bond from a specific insurance or surety company, producer, agent, or broker.

The District may waive the requirement of a performance or payment bond to the extent allowed by rules of the State procurement policy in circumstances where the Procurement Officer determines that such bonds are unnecessary to protect the District.

### ***C. Form of Bonds***

The form of the bonds required by this policy shall be established by rule made by the State procurement policy. Any person may obtain from the District a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any.

## **III. Use of Construction Manager/General Contractor**

Subject to rules issued by the State procurement policy, the Board of Education or the Procurement Officer may select the appropriate method of construction contracting management for a particular District construction project. The Board of Education or the Procurement Officer shall include in the contract file a written statement describing the facts which led to the selection of a particular method of construction contracting management for a particular project.

Before choosing a construction contracting management method, the Board of Education or the Procurement Officer shall consider the following factors:

- when the project must be ready to be occupied;
- the type of project;
- the extent to which the requirements of the District and the way they are to be met are known;
- the location of the project;
- the size, scope, complexity, and economics of the project;
- the source of funding and any resulting constraints necessitated by the funding source;
- the availability, qualification, and experience of public personnel to be assigned to the project and the amount of time that the public personnel can devote to the project; and
- The availability, qualifications, and experience of outside consultants and contractors to complete the project under the various methods being considered.

### ***A. Construction Manager / General Contractor***

Subject to rules of the State Procurement Policy, the District may use a construction manager/general contractor as one method of construction contracting management. The construction manager/general contractor shall be selected using a standard procurement process or a valid exception to a standard process. In addition, when entering into a subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the construction manager/general contractor shall procure the subcontractor by using a standard procurement process or a valid exception to a standard process in the same manner as if the subcontract work was procured directly by the District. A construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

### ***B. Design-Build Contract***

Subject to rules of the State Procurement Policy, the District may use a design-build provider as one method of construction contracting management. A design-build contract may include a provision for obtaining the site for the construction project. A design-build contract may include provision by the contractor of operations, maintenance, or financing.

## **IV. Limitation on Change Orders**

A “change order” is a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract, upon mutual agreement of the parties to the contract.

Under a construction contract, a change order that increases the contract amount may not be made without prior written certification that the change order is within the determined project or contract budget by either the Business Administrator or another administrator who is responsible for monitoring and reporting upon the status of the costs of the total project or contract budget. Any change order exceeding \$50,000 must be approved by the Board of Education.

A change order which will result in an increase in the total project or contract budget may not be made, unless either:

1. Sufficient funds are added to the project contract or budget, or
2. The scope of the project or contract is adjusted to permit the degree of completion feasible within the total project or contract budget as it existed before the change order under consideration.

## **V. Drug and Alcohol testing**

As set forth in this policy, the District may determine to require contractors on construction contracts to implement drug and alcohol testing by requiring that the contractor demonstrate that the contractor:

1. Has and will maintain a drug and alcohol testing policy during the period of the District construction contract that applies to the covered individuals hired by the contractor;
2. Posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy;
3. Subjects the covered individuals to random testing under the drug and alcohol testing policy if at any time during the period of the District construction contract there are 10 or more individuals who are covered individuals hired by the contractor; and

4. Requires that as a condition of contracting with the contractor, a subcontractor meet these same requirements.

In determining whether to include a drug and alcohol testing requirement in a construction contract, the District may consider any relevant considerations, including whether imposing the requirement would jeopardize the receipt of federal funds, cause the construction contract to be a sole source contract, cause the state construction contract to be an emergency procurement, or impose an undue burden on contractors in light of the size of the project and the composition of the contractors likely to bid on the project. If a testing requirement is imposed and a contractor or subcontractor meets that requirement, this policy does not prevent a contractor or subcontractor from imposing or implementing any other lawful provision as part of a drug and alcohol testing policy. Drug and alcohol testing by contractors and subcontractors shall comply with the requirements of Title 34, Chapter 38 of the Utah Code, which sets out requirements relating to drug and alcohol testing by private employers.

***A. Contractor Failure to Comply with Testing Requirements***

Subject to any rules issued by the State procurement policy, if a contractor or subcontractor fails to comply with a testing requirement imposed under this policy, the contractor or subcontractor may be suspended or debarred in accordance with the Utah Procurement Code and the District's procurement policies. However, in such instance, the contractor or subcontractor shall be provided a process which includes reasonable notice and opportunity to cure a violation of the testing requirement before suspension or debarment in light of the circumstances of the District construction contract or the violation. In addition, a contractor is not subject to penalties for the failure of a subcontractor to comply with a testing requirement.

The failure of a contractor or subcontractor to comply with a testing requirement imposed under this policy may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor or any appeal pursuant to the District's procurement policies. In addition, such failure may not be used by the District, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a District construction contract.

***B. Limitation of District Responsibility for Testing***

After the District enters into a District construction contract which contains a testing requirement, the District is not required to audit, monitor, or take any other action to ensure compliance with such requirement. In addition, the District is not liable in any action related to this policy, including not being liable in relation to:

- a contractor or subcontractor having or not having a drug and alcohol testing policy;
- failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;
- the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

- a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for collection of a sample, testing of a sample, evaluation of a test, or disciplinary or rehabilitative action on the basis of a test result;
- an individual being under the influence of drugs or alcohol; or
- An individual under the influence of drugs or alcohol harming another person or causing property damage.

## **VI. Architect/Engineer Services**

### ***A. General Policy***

The District shall publicly announce all requirements for architect-engineer services through a request for statement of qualifications and shall negotiate contracts for architect-engineer services on the basis of demonstrated competence and qualification for the type of services required and at fair and reasonable prices. Such services shall be procured as provided in this policy except as otherwise provided in Policy 6210 regarding vendor qualification, Policy 6210 regarding small purchase procurement, and Policy 6210 regarding sole source and emergency procurement. This policy does not apply to the hiring of an architect or engineer as an employee of the District.

### ***B. Selection Committee***

The Board of Education or the Procurement Officer shall encourage firms engaged in the lawful practice of architect-engineer services to submit a statement of qualifications. Subject to rules made by the Procurement Policy Board, the District shall establish an evaluation committee for architect-engineer services contracts. The evaluation committee shall

1. Evaluate current statements of qualifications and performance data on file with the District, together with those that may be submitted by other firms in response to the announcement of a proposed contract;
2. Consider no less than three firms; and
3. Based upon criteria established and published by the District, select no less than three of the firms considered to be the most highly qualified to provide the services required.

### ***C. Restriction regarding higher education institutions***

When the District elects to obtain architect or engineering services by using a competitive procurement process and has provided public notice of its competitive procurement process, the District may not award a contract to perform the architect or engineering services to a higher education entity or any part of one.

### ***D. Determination of Compensation***

The Procurement Officer shall award a contract to a qualified firm at compensation that the Procurement Officer determines, in writing, to be fair and reasonable to the District. In

making that determination, the Procurement Officer shall take into account the services' estimated value, scope, complexity, and professional nature.

If the Procurement Officer is unable to agree to a satisfactory contract with the firm first selected, at a price the Procurement Officer determines to be fair and reasonable to the District, the Procurement Officer shall formally terminate discussions with that firm and undertake discussions with a second qualified firm. If the Procurement Officer is unable to agree to a satisfactory contract with the second firm selected, at a price the Procurement Officer determines to be fair and reasonable to the state, the Procurement Officer shall formally terminate discussions with that firm and undertake discussions with a third qualified firm. If the Procurement Officer is unable to award a contract at a fair and reasonable price to any of the selected firms, the Procurement Officer shall select additional firms and continue discussions in accordance with this section until an agreement is reached.

## **VII. Constructions Requirements**

### ***A. Pre-Construction***

1. Before any District construction project begins, the District shall obtain a construction project number from the Utah State Office of Education and complete and submit construction project identification forms provided by the Utah State Office of Education for all projects which exceed \$99,999 in cost.
2. All District plans and specifications shall be approved by a certified plans examiner before any District construction project begins.
3. Prior to developing plans and specifications for a new public school, or the expansion of an existing public school, the District shall coordinate with affected local government land use authorities and utility providers to:
  - a. ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;
  - b. ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;
  - c. avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future roadways;
  - d. Maximize school, student and site safety.
4. Prior to developing plans and specifications for a new public school, or the expansion of an existing school, the District shall coordinate with local health departments and the State Fire Marshal.
5. The District shall maintain documentation for audit purposes of coordination, meetings, and agreements.
6. Design and construction planning, direction and management are the responsibility of the district Facilities Director. The facilities director may at their



discretion and within the scope of other district policies make decisions regarding the design and construction of projects.

### ***B. School District Building Official***

The Board shall appoint a School District Building Official (SDBO) who has direct administrative and operational control of all construction, renovation, and inspection of the District's facilities and shall provide in writing the name of the SDBO to the Utah State Office of Education. The SBDO and other District personnel shall act consistent with the Utah State Office of Education Resource Manual on school building construction and inspections.

The SDBO shall:

1. Monitor school district building construction to ensure compliance with the applicable provisions of the Code, including all statutes and administrative rules which control the construction, renovation, and inspection of Utah public school buildings.
2. Render interpretations of the Code for the District. Such interpretations shall be in conformance with the intent and purpose of the Code.

For all District projects that exceed \$99,999, the SDBO shall:

1. Submit inspection summary reports monthly to the Utah State Office of Education;
2. Submit inspection summary reports monthly to the appropriate local government entity building official;
3. Submit inspection certificates to the Utah State Office of Education and appropriate local government entity building official;
4. Maintain all submitted documentation at a designated school district location for auditing or monitoring;
5. Identify in the monthly summary reports and provide to the Utah State Office of Education and local government entity building official the total number of inspections with the name, state license number, and disciplines of each inspector performing the building inspections;
6. Ensure that each inspector is adequately and appropriately credentialed;
7. Sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with the law and this rule;

8. Send the final inspection certification and inspection verification certifying that all inspections were completed in accordance with the Code to the Utah State Office of Education and to the appropriate local government entity building official upon completion of the project; and
9. Provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located.

### ***C. Construction Inspection***

The District may employ one of three methods for school construction inspection:

1. An independent, properly licensed and certified building inspector;
  - a. The independent building inspector shall:
    - 1) Not be an employee of the architect, contractor or any subcontractor on the project;
    - 2) Be approved by the applicable local government or school district building inspector; and
    - 3) Be properly licensed and certified to perform all of the inspections that the inspector is required to perform.
2. A properly licensed and certified building inspector, employed by the school district; or
3. A properly licensed and certified building inspector approved by the local jurisdiction in which the construction activity occurs.

### ***D. Permanent Occupancy Certificate***

The District shall seek a certificate authorizing permanent occupancy of the school building from the State Superintendent of Public Instruction. The District may issue its own certificate authorizing permanent occupancy of a school building if it used a building inspector employed by the public school district for inspection of the school building.

Upon the District's filing of the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the Utah State Office of Education, the District shall be entitled to temporary occupancy of the school building for a period up to ninety (90) days, beginning on the date the request is filed, if the District has complied with all applicable fire and life safety code requirements.

A certificate authorizing permanent occupancy issued by the State Superintendent of Public Instruction shall be considered to satisfy any municipal or county requirement(s) for an inspection or a certification of occupancy.

### ***E. Municipality and County Requirements***

A municipality or county may, at its discretion, schedule a time with District officials to:

1. Provide a walk-through of school construction at no cost and at a time convenient to the school district or charter school; and
2. Provide recommendations based on the walk-through.

A municipality or county may **not**:

1. Require the District to landscape, fence, make aesthetic improvements, use specific construction methods or materials, impose requirements for buildings used only for educational purposes, or place limitations prohibiting the use of temporary classroom facilities on school property. All temporary classroom facilities shall be properly inspected to meet the Code;
2. Require the District to participate in the cost of any roadway or sidewalk, or a study of the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated public school or an existing roadway;
3. Require the District to pay fees not authorized under Utah Code;
4. Require inspection of school construction or assess a fee or other charges for inspection, unless the District is unable to provide for inspection by properly licensed and certified inspectors, other than the project architect, contractor or subcontractors;
5. Require the District to pay any impact fee for an improvement project unless the impact fee is imposed pursuant to the Impact Fees Act;
6. Impose regulations upon the location of a public school project except as necessary to avoid unreasonable risks to health or safety of students; or
7. For a use or structure that is a support facility rather than an educational facility, impose a regulation that is not imposed on similar uses or structures in the same zone, or a regulation that uses the tax-exempt status of the District as a criterion for regulating the use or the location of the structure.

Legal References:

Utah Code § 53E-3-703  
 Utah Code § 63G-6a-1102  
 Utah Code § 63G-6a-1103  
  
 Utah Code § 63G-6a-1105  
 Utah Code § 63G-6a-1302  
 Utah Code § 63G-6a-103  
 Utah Code § 63G-6a-1303  
  
 Utah Code § 63G-6a-1502  
 Utah Code § 63G-6a-1506  
  
 Utah Code § 63G-6a-1505

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Utah Code §10-9a-305(8) (e) (2011)  
Utah Code §17-27a-305(8) (e) (2011)

Utah Admin. Rules R277-471-6

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