



Provo City School District
Policy Series 6000 Finances and Operations

Policy No. 6212

Procurement of Construction

Purpose

This policy is intended to outline construction procurement guidelines in an efficient, cost-effective manner which:

- Assists the district in achieving its mission and goals
- Protects the integrity of district employees
- Protects the integrity of Provo City School District
- Protects the assets of the district

The Provo City School District will also follow procurement procedures required by law and set forth in the Utah State Procurement Code 63G-6a and Utah Admin Rule R33

Policy 6212 applies to govern procurement of construction by the district. To the extent that this policy may differ from policy 6210, this policy shall govern. The district's remaining procurement policies otherwise govern procurement of construction.

School Construction Bidding

Any project for construction of any district building or alteration of any existing district building where the total estimated accumulated building project cost exceeds \$100,000 shall adhere to the following requirements:

- Request for Proposal shall be posted on the district website and state procurement website
- 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, district administration and the Board of Education may proceed under its own direction with the required project.

Security

- Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item but may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.
- Invitations for Bids and Requests for Proposals for construction contracts estimated to exceed \$50,000 shall require the submission of bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted. (The Procurement Official or Board of Education or its designee may require acceptable security in amounts lower than this.)

- Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and type of bid security, when the Procurement Official or Board of Education or its designee determines it is in the best interest of the district.
- If a person fails to include the required bid security, the bid shall be deemed nonresponsive and ineligible for consideration of award except in the case that the security is provided on a bid on a re-solicitation, where there is only one bidder, or where the Procurement Official or Board of Education or its designee determines the failure is non-substantial. If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Procurement Official or Board of Education or its designee to be non-substantial. Failure to submit an acceptable bid security may be deemed non-substantial if:
 - the bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the applicable requirements and the contractor provides acceptable bid security by the close of business of the next succeeding business day after the district notifies the contractor of the defective bid security; or
 - only one bid is received, and there is not sufficient time to re-solicit; or
 - the amount of the bid security submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or
 - the bid security becomes inadequate as a result of the correction by the district of a mistake in the bid or bid modification, if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.
- If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required, then the bidder's bid security may be forfeited.

Performance Bonds

- A performance bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the district within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract may be made to the next lowest responsive and responsible bidder or highest ranked offeror.

Payment Bonds

- A payment bond is required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. If a contractor fails to deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the next lowest responsive and responsible bidder or highest ranked offeror.
- The Procurement Official or Board of Education or its designee may waive any bonding requirement if it determines in writing that:

- Bonds cannot reasonably be obtained for the work involved
- The cost of the bond exceeds the risk to the district
- Bonds are not necessary to protect the district's interests

If the District determines to use a construction manager/general contractor, including a design/build provider, as its method of construction contracting management on projects where the total estimated accumulative cost exceeds \$100,000, it shall select the construction manager/general contractor in accordance with the requirements of the Utah Procurement Code.

Prohibition of Board Member Interest in School Construction

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

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 designated administrator who is responsible for monitoring and reporting upon the status of the costs of the total project or contract budget. Any change orders above Board procurement authorization thresholds 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

District May Require Drug and Alcohol Testing for Construction Contracts

The district may determine to require contractors on construction contracts to implement drug and alcohol testing. 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.

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.

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.

If the District enters into a 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.

Procurement of Architect-Engineer Services

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.

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 SDBO and other District personnel shall act consistent with the Utah State Office of Education Resource Manual on school building construction and inspections.

Legal References:

Utah Code § 63G-6a
Utah Code § 53A-20-101(2)
Utah Code § 53A-20-101(3)
Utah Code § 53A-20-101(9)
Utah Code § 63G-6a-103
Utah Code § 10-9a-305
Utah Code § 17-27a-305
Utah Admin. Rules R277-471
Utah Admin Rules R33-11

Approved by Board of Education: September 10 2024