

## **Procurement: *Exceptions to Standard Procurement Processes***

### **Exceptions to Standard Procurement Processes—**

Any procurement by the District must either be done through one of the standard procurement processes or under a valid exception to those standard processes. The standard procurement processes are (1) bidding, as described in Policies CBB and CBC; (2) requests for proposals, as described in Policy CBD; and (3) small purchases, as described in Policy CBE. The exceptions to the standard procurement processes are sole source procurement, trial use contracts, contract extension, emergency procurement, community rehabilitation program procurement, and prison industry goods procurement. The requirements relating to each exception are set forth in this policy.

[Utah Code § 63G-6a-103\(83\), \(88\) \(2016\)](#)

[Utah Code § 63G-6a-802 \(2016\)](#)

[Utah Code § 63G-6a-803 \(2016\)](#)

[Utah Code § 63G-6a-804 \(2013\)](#)

[Utah Code § 63G-6a-805 \(2016\)](#)

### **Sole Source Procurement—**

#### *Required Conditions for Sole Source Procurement*

The District may award a contract for a procurement item without engaging in a standard procurement process if the Board of Education or the district Procurement Officer makes a written determination that (a) there is only one source for the procurement item or (b) transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive and that awarding a contract without engaging in a standard procurement process is in the best interest of the District. In addition, the District may award a contract without engaging in a standard procurement process under circumstances established by rule of the Procurement Policy Board. An urgent or unexpected circumstance or requirement for a procurement item does not justify a sole source procurement.

“Transitional costs” mean the costs of changing from an existing provider of, or type of, a procurement item to another provider of, or type of, procurement item, including training costs, conversion costs, compatibility costs, costs associated with system downtime, disruption of service costs, staff time necessary to implement the change, installation costs, and ancillary software, hardware, equipment, or construction costs. “Transitional costs” do not include (1) the costs of preparing for or engaging in a procurement process, or (2) contract negotiation or contract drafting costs, or (3)

costs associated with a trial use or testing of a procurement item under a trial use contract.

[Utah Code § 63G-6a-103\(95\) \(2016\)](#)  
[Utah Code § 63G-6a-802\(1\), \(2\) \(2016\)](#)  
[Utah Admin. Rules R33-8-101\(3\) \(June 23, 2015\)](#)

### *Process for Sole Source Procurement*

Requests for a procurement to be conducted as a sole source shall be submitted in writing for approval to the Procurement Officer or Board of Education or its designee. Such request shall include:

- (1) a description of the procurement item;
- (2) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;
- (3) the duration of the proposed sole source contract;
- (4) a signature of an authorized District employee;
- (5) research completed to document that there are no other competing sources for the procurement item; and
- (6) any other information requested by the Procurement Officer or the Board of Education or its designee.

The Sole Source Request form, CBF Policy Exhibit 1, shall be used to request approval for sole source procurement.

[Utah Admin. Rules R33-8-101 \(June 23, 2015\)](#)

### *Required Notice*

Before proceeding with a sole source procurement in excess of \$50,000, the District shall publish a notice meeting the requirements of Policy CBA and which also:

- provides contact information and other information relating to contesting, or obtaining additional information in relation to, the procurement, and
- states the earliest date that the District may make the procurement.

However, the notice is not required for sole source procurement of public utility services. Publication of notice is also not required for other circumstances as determined by rule of the Procurement Policy Board. Under Procurement Policy Board rule, publication of notice is not required for sole source procurements for:

- conference and convention facilities and services,
- conference fees, including materials,
- membership dues,
- speakers or trainers and associated training materials,
- hosting of out-of-state and international dignitaries,
- an award when the Legislature identifies the intended recipient of a contract,
- an award to a specific supplier, service provider, or contractor if the award is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item, or
- other circumstances as determined in writing by the Procurement Officer or the Board of Education.

Notice of sole source procurements for amounts less than \$50,000 may be published by the District in the discretion of the Procurement Officer or Board of Education or its designee.

The District shall also make a copy of information related to the sole source procurement available for public inspection at the main District office or on the website of the District or of the Division of Purchasing and General Services until award of the contract or the cancellation of the procurement.

[Utah Code § 63G-6a-112 \(2016\)](#)

[Utah Code § 63G-6a-802\(3\) \(2016\)](#)

[Utah Admin. Rules R33-8-101\(7\) \(June 23, 2015\)](#)

### *Negotiation for Best Terms*

When the District uses sole source procurement, the Procurement Officer or Board of Education shall negotiate with the contractor to ensure that the terms of the contract, including price and delivery, are in the best interest of the District.

[Utah Code § 63G-6a-802\(4\) \(2016\)](#)

### *Challenge to Sole Source Procurement*

A person may contest a sole source procurement prior to the closing of the required public notice period by submitting the following information in writing to the Procurement Officer or Board of Education or its designee:

- (1) the name of the contesting person; and
- (2) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.

Upon receipt of information contesting a sole source procurement, the Procurement Officer or Board of Education or its designee shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

[Utah Admin. Rules R33-8-101\(8\), \(9\) \(June 23, 2015\)](#)

## **Trial Use Contracts—**

A “trial use contract” is a contract between the District and a vendor for a procurement item that the District acquires for trial use or testing to determine whether it will benefit the District.

[Utah Code § 63G-6a-103\(96\) \(2016\)](#)

The District may award a trial use contract without engaging in a standard procurement process if the contract is (1) awarded for a procurement item that is not already available to the District under an existing contract, (2) restricted to the procurement of a procurement item in the minimum quantity and for the minimum period of time necessary to test the procurement item, (3) the only trial use contract for the District for the same procurement item; and (4) not used to circumvent the purposes and policies of the Procurement Code.

[Utah Code § 63G-6a-802.3\(1\) \(2016\)](#)

The period of trial use or testing of a procurement item under a trial use contract may not exceed 18 months, unless the Procurement Officer provides a written exception documenting the reason for a longer period.

[Utah Code § 63G-6a-802.3\(2\) \(2016\)](#)

A trial use contract shall:

- state that the contract is strictly for the purpose of the trial use or testing of a procurement item;
- state that the contract terminates upon completion of the trial use or testing period;
- state that the District is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;
- state that any purchase of the procurement item beyond the terms of the trial use contract will be made in accordance with the Procurement Code; and
- include, as applicable:
  - test schedules;
  - deadlines and a termination date;
  - measures that will be used to evaluate the performance of the procurement item;

- any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;
- the obligations of the District and vendor;
- provisions regarding the ownership of the procurement item during and after the trial use or testing period;
- an explanation of the grounds upon which the contract may be terminated;
- a provision relating to any required bond or security deposit; and
- other requirements unique to the procurement item for trial use or testing.

[Utah Code § 63G-6a-802.3\(3\) \(2016\)](#)

The District is not required to publish notice of a trial use contract.

[Utah Code § 63G-6a-802.3\(4\) \(2016\)](#)

### **Contract Extension—**

The Board of Education or Procurement Officer may extend an existing contract without engaging in a standard procurement process as stated in this section.

An existing contract may be extended for a period not to exceed 120 days if:

- an extension is necessary to either
  - avoid a lapse in a critical governmental service, or
  - to mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, and
- the District is engaged in a standard procurement process for an item that is the subject of the contract being extended, and
  - the standard procurement process is delayed due to unintentional error, or
  - a change in industry standards requires one or more significant changes to specifications for the procurement item, or
  - the extension is necessary to either
    - prevent the loss of federal funds, or
    - mitigate the effects of a delay of a state or federal appropriation, or

- to enable the District to continue to receive a procurement item during a delay in the implementation of a contract awarded pursuant to a procurement that has already been conducted, or
- to enable the District to continue to receive a procurement item during a period of time during which negotiations with a vendor under a new contract for the item are being conducted;

An existing contract may be extended for the period of a protest, appeal, or court action if such protest, appeal, or court action is the reason for delaying the award of a new contract.

An existing contract may be extended for a period not to exceed 120 days if the attorney general or the District's attorney determines in writing that the extension does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.

[Utah Code § 63G-6a-802.7 \(2016\)](#)

### **Emergency Procurement—**

Notwithstanding any other District policy regarding procurement, the Board of Education or the Procurement Officer may authorize an emergency procurement without using a standard procurement process if the procurement is necessary to (1) avoid a lapse in a critical government service, (2) mitigate a circumstance that is likely to have a negative impact on public health, safety, welfare, or property, or (3) protect the legal interests of a public entity. Circumstances likely to have a negative impact on public health, welfare, safety, or property include:

- (1) damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;
- (2) failure or imminent failure of a public building, equipment, road, bridge or utility;
- (3) terrorist activity;
- (4) epidemics;
- (5) civil unrest;
- (6) events that impair the ability of a public entity to function or perform required services;
- (7) situations that may cause harm or injury to life or property; or

- (8) other conditions as determined in writing by the Procurement Officer or Board of Education or its designee.

Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

The District shall ensure that the procurement is made with as much competition as reasonably practicable (through use of phone quotes, Internet quotes, limited invitations to bid, or other selection methods) while avoiding a lapse in a critical government service, avoiding harm, or risk of harm, to the public health, safety, welfare, property, or protecting the legal interests of a public entity.

After the emergency has abated, the District shall prepare a written document that explains the emergency condition that necessitated the emergency procurement.

[Utah Code § 63G-6a-803 \(2016\)](#)

[Utah Admin. Rules R33-8-401 \(June 23, 2015\)](#)

### **Procurement from Community Rehabilitation Programs—**

The Utah Purchasing from Persons with Disabilities Advisory Board establishes a preferred procurement contract list of goods and services available for purchase from community rehabilitation programs, developing, maintaining, and approving a preferred procurement contract list of goods and services. Unless the fiscal year threshold has been reached as stated below, the District shall purchase goods and services using this preferred procurement contract list if:

- the good or service offered for sale by a community rehabilitation program reasonably conforms to the needs and specifications of the District;
- the community rehabilitation program can supply the good or service within a reasonable time; and
- the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source.

Procurement from this preferred procurement contract list may be done without using a standard procurement process.

The requirement that the District purchase available goods from this preferred procurement contract list does not apply during a particular fiscal year if the Division of Purchasing and General Services determines that the total amount of procurement contracts with community rehabilitation programs has reached \$5 million for that fiscal year.

[Utah Code § 63G-6a-805\(4\), \(7\), \(9\) \(2016\)](#)



### **Purchase of Prison Industry Goods—**

The District may purchase goods and services from the Utah Correctional Industries Division without following a standard procurement process. The director of Utah Correctional Industries publishes a catalog of goods and services which includes a description and price of each item offered for sale. In determining whether to procure a goods or services from the Correctional Industries Division, the Procurement Officer shall consider whether such procurement is in the best interests of the District, including for example (a) whether the good or service meets the reasonable requirements of the District, (b) when the good or service can be supplied by the division, and (c) whether the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is competitive with the cost of procuring the item from another source.

[Utah Code § 63G-6a-804 \(2013\)](#)