

## Procurement: Exceptions to Standard Procurement Processes - CBF

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, emergency procurement, community rehabilitation program procurement, ~~and~~ prison industry goods procurement, and alternative procurement methods. The requirements relating to each exception are set forth in this policy.

*Utah Code § 63G-6a-103(50) (2014);*

*Utah Code § 63G-6a-802(2014);*

*Utah Code § 63G-6a-803 (2012);*

*Utah Code § 63G-6a-804 (2013);*

*Utah Code § 63G-6a-805 (2013)*

*Utah Admin. Rules R33-8-30 (July 8, 2014)*

### **Sole Source Procurement**

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

The District may award a contract for a procurement item without competition if the Board of Education, the district Procurement Officer, or a designee of the Procurement Officer who is senior to the Procurement Officer makes a written determination that (a) there is only one source for the procurement item or (b) that the award to a specific supplier, service provider, or contractor is a condition of a donation that will fund the full cost of the supply, service, or construction item (c) the procurement item is needed for trial use or testing to determine whether it will benefit the District. An urgent or unexpected circumstance or requirement for a procurement items does not justify a sole source procurement.

Circumstances under which there is only one source for a procurement item may include:

1. Where the most important consideration in obtaining a procurement item is the compatibility of equipment, technology, software, accessories, replacement parts, or service;
2. Where transitional costs are unreasonable or cost prohibitive; or
3. Procurement of public utility services.

“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, system downtime, disruption of service, staff time necessary to put the transition into effect, installation costs, and ancillary software, hardware, equipment, or construction costs. “Transitional costs” do not include either the costs of preparing for or engaging in a procurement process or contract negotiation or contract drafting costs.

*Utah Code § 63G-6a-802(1) to (3) (2014)*

*Utah Admin. Rules §33-8-101(3) (July 8, 2014)*

#### *Process for Sole Source Procurement*

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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. Unless the sole source procurement is for trial use or testing, 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.

### *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.

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.

A trial use contract shall:

1. State that the purpose of the contract is strictly for the purpose of the trial use or testing of a procurement item;
2. State that the contract terminates upon completion of the trial use or testing period;
3. State that, after the trial use or testing period, the procurement unit is not obligated to purchase or enter into a contract for the procurement item, regardless of the trial use or testing result;
4. State that any purchase of the procurement item beyond the terms of the trial use contract will be made in accordance with this chapter; and include as applicable:
  - a. Test schedules;
  - b. Deadlines and a termination date;
  - c. Measures that will be used to evaluate the performance of the procurement item;
  - d. Any fees and associated expenses or an explanation of the circumstances warranting a waiver of those fees and expenses;
  - e. The obligations of the procurement unit and vendor;
  - f. Provisions regarding the ownership of the procurement item during and after the trial use or testing period;

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- g. An explanation of the grounds upon which the contract may be terminated;
- h. A limitation of liability;
- i. A consequential damage waiver provision;
- j. A statement regarding the confidentiality or nondisclosure of information;
- k. A provision relating to any required bond or security deposit; and
- l. Other requirements unique to the procurement item for trial use or testing.

*Utah Code § 63G-6a-802 (1) (d), (6) (2014)*

### *Contract Extension*

The District may extend a contract for a reasonable period of time without engaging in a standard procurement process, if:

1. The award of a new contract for the procurement item is delayed due to a protest or appeal;
2. The standard procurement process is delayed due to unintentional error;
3. Changes in industry standards require significant changes to specifications for the procurement item;
4. The extension is necessary to prevent the loss of federal funds;
5. The extension is necessary to address a circumstance where the appropriation of state or federal funds has been delayed; or
6. The extension covers the period of time during which contract negotiations with a new provider are being conducted; or
7. The extension is necessary to avoid a lapse in critical governmental services that may negatively impact public health, safety or welfare.

*Utah Code § 63G-6a-802(7) (2014)*

### *Required Notice*

~~Subject to rules issued by the Procurement Policy Board, b~~Before proceeding with a sole source procurement in excess of ~~[\$30,000] [\$50,000]~~, the District shall publish a notice meeting the requirements of Policy CBA and which also:

1. Provides contact information and other information relating to contesting, or obtaining additional information in relation to, the sole source procurement, and
2. States the earliest date that the District may make the sole source procurement.

However, the notice is not required for sole source procurement of public utility services, ~~or for a trial use contract.~~ Publication of notice is also not required for other circumstances as determined in writing by the Procurement Officer or Board of Education or its designee. Notice of sole source procurements for the amount of 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.

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Utah Code § 63G-6a-406(2014));

Utah Code § 63G-6a-802(4)(6)(c) (2014)

Utah Admin. Rules R33-8-101(7) (July 8, 2014)

### 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) (July 8, 2014)

### **Emergency Procurement**

Notwithstanding any other District policy regarding procurement, the Procurement Officer or his or her designee may authorize an emergency procurement without using a standard procurement process when circumstances create harm or risk of harm to public health, welfare, safety, or property. an emergency condition exists. The Procurement Officer or designee shall make the authorization in writing, stating the emergency condition upon which the emergency procurement is made and shall also ensure that the procurement is made with as much competition as reasonably practicable while avoiding harm, or a risk of harm, to the public health, safety, welfare, or property. Such circumstances 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.

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The Procurement Officer or designee shall make the authorization in writing stating the emergency condition upon which the emergency procurement is made and shall also 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 harm, or risk of harm to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

The Procurement Officer or designee shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

*Utah Code § 63G-6a-803 (2012)*

*Utah Admin. Rules R33-8-401 (July 8, 2014)*

### **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:

1. The good or service offered for sale by a community rehabilitation program reasonably conforms to the needs and specifications of the District;
2. The community rehabilitation program can supply the good or service within a reasonable time; and
3. 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) (2013)*

### **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

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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)*

### Alternative Procurement Methods

The Procurement Officer or the Board of Education or its designee may use alternative procurement methods to acquire procurement items such as those listed below when it is determined in writing by the Procurement Officer or Board of Education or its designee to be more practicable or advantageous to the District:

1. Used vehicles;
2. Livestock;
3. Hotel conference facilities and services;
4. Speaker honorariums;
5. Hosting out-of-state and international dignitaries; and
6. Any other procurement item for which a standard procurement method is not reasonably practicable.

When making this determination, the Procurement Officer or Board of Education or designee may take into consideration whether:

1. The potential cost of preparing, soliciting and evaluating bids or proposals is expected to exceed the benefits normally associated with such solicitations;
2. The procurement item cannot be acquired through a standard procurement process; and
3. Whether the price of the procurement is fair and reasonable.

In the event that it is so determined, the Procurement Officer or Board of Education or designee may elect to utilize an alternative procurement method, which may include:

1. Informal price quotations
2. Direct negotiations; and,
3. Direct award.

Utah Admin. Rules R33-8-301 (July 8, 2014)