



NEBO SCHOOL DISTRICT BOARD OF EDUCATION POLICIES AND PROCEDURES

SECTION: D – Fiscal Management
POLICY TITLE: Contracting Procedures and Authority
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1. PURPOSE AND PHILOSOPHY

- 1.1. The Board of Education is entrusted by the public to ensure that taxes and other public funds are used appropriately. Running a large school district requires large amounts of goods and services. To accomplish its educational mission, it is often necessary for the District to enter into contracts with third parties. The Board is accountable to taxpayers for the prudent use of tax funds and must ensure proper stewardship over assets.
- 1.2. State and federal laws impose certain requirements and procedures on the District's use of third-party vendors. Contracts entered into by the District must meet these requirements and follow these procedures.
- 1.3. Under Utah law, the Board of Education of Nebo School District may take, hold, lease, sell, and convey real and personal property as the interests of the schools may require. UTAH CODE ANN. § 53G-4-401. Due to the size and complexity of the District and its operations, it is necessary to delegate and delineate the authority and procedures for the execution of contracts. This policy outlines the contracting authority and procedures for the District, including the respective roles of the Board, the Administration, the Business Administrator, Legal Counsel, and others.
- 1.4. This policy applies to any contract, as defined herein.

2. DEFINITIONS

- 2.1. "Budget manager" means the top administrator at a given school or department. In a school, it is the principal. In a department, it is the department director. In the case of a department with no assigned director, it is the top administrator or middle manager who reports to the director who generally oversees the department.
- 2.2. "Contract" means a written, legally enforceable agreement that creates obligations on the parties. A contract may carry any of various titles, including but not limited to "affiliation agreement," "interlocal agreement," "agreement," "lease," "memorandum of agreement (MOA)," "memorandum of understanding (MOU)," "terms and conditions," or other similar title.

- 2.3. “Multiyear contract” means a contract that extends beyond a one-year period, including a contract that permits renewal of the contract, without competition, beyond the first year of the contract.
- 2.4. “Procurement Officer” means the District employee designated or hired as the procurement officer.
- 2.5. “Professional service” means labor, effort, or work that requires an elevated degree of specialized knowledge and discretion, including labor, effort, or work in the field of (a) accounting, (b) administrative law judge service, (c) architecture, (d) construction design and management, (e) engineering, (f) financial services, (g) information technology, (h) law, (i) medicine, (j) psychiatry, or (k) underwriting.
- 2.6. “Service” means labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a professional service. “Service” does not include labor, effort, or work provided under an employment agreement or a collective bargaining agreement.

3. AUTHORITY TO EXECUTE CONTRACTS

- 3.1. Under Utah law, the Business Administrator is authorized to obligate the District for the purchase of goods or services. In addition, the District hereby delegates to the following the authority to sign contracts.
 - 3.1.1. Superintendent, including assistant or associate superintendents
 - 3.1.2. Business Administrator, including assistant business administrators
 - 3.1.3. Directors
 - 3.1.4. Coordinators
 - 3.1.5. Supervisors over the following departments:
 - 3.1.5.1. Child Nutrition
 - 3.1.5.2. Technical Services
 - 3.1.5.3. Transportation
 - 3.1.5.4. Warehouse
 - 3.1.6. School principals
- 3.2. School principals are authorized to enter into contracts that obligate the District only to the end of the next school year. For example, a principal could sign a contract in November of 2018 that terminates at the end of the 2019-2020 school year but could not sign a contract that extends into the 2020-2021 school year.
- 3.3. Employees not authorized under this section may not sign contracts. Likewise, individual Board members lack authority to enter into contracts or bind the District outside of official action taken by a quorum at an open Board meeting. A contract signed by anyone not authorized under this section may be void.

4. COMPLIANCE WITH LAW

- 4.1. In all activities, District employees and Board members shall comply with the *Utah Public Officers’ and Employees’ Ethics Act*, UTAH CODE ANN. § 67-16, and other District policies. Employees must adhere to the requirements of UTAH CODE ANN. § 67-16-4, UTAH ADMIN. CODE R277-107, and Nebo School District Administrative Directive 5.1, *Private but Public Education Related Activities*. Educators shall also comply with Utah Educator Standards, UTAH ADMIN. CODE R277-515. In particular, employees shall refrain from using their position of influence to profit commercially or benefit personally from parties interested in conducting business with the District. Employees

should not contract for products or services offered by themselves or their family-owned business unless the transaction is arms-length and the employee receives express permission from the Business Administrator after disclosing the potential conflict of interest. This provision is not intended to prevent employees from communicating opportunities for extracurricular involvement or other enrichment activities.

- 4.2. All contracts must follow the requirements outlined in the Utah Procurement Code, UTAH CODE ANN. § 63G-6a-101 et seq., the Utah Procurement Rules, UTAH ADMIN. CODE R33, and Nebo School District Policy DJB, *Purchasing*.
- 4.3. All contracts must comply with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA) and Utah student data protection laws, UTAH CODE ANN. § 53E-9-101 et seq. Specifically, a contract may not permit the disclosure of personally identifiable student data in contravention of these laws. Any contract that would permit the third party contractor access to student data must be accompanied by a student privacy and data protection MOA, signed by the District Student Data Manager prior to execution.
- 4.4. A contract may not waive the protections of the Utah Governmental Immunity Act, including damage caps. A contract that includes an indemnity provision that would otherwise waive the immunity rights must be accompanied by a clarifying addendum approved by Utah State Risk Management.

5. PERMISSIBLE AND IMPERMISSIBLE TYPES OF CONTRACTS

- 5.1. Except as otherwise provided in this policy, and subject to any rules made by the Utah State Procurement Policy Board, the District may use any type of contract that will promote its best interests. See UTAH CODE ANN. § 63G-6a-1205. However, before the District uses any type of contract other than a firm fixed price contract, as defined below, the Procurement Officer must first make a written determination that:
 - 5.1.1. the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated;
 - 5.1.2. the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles; and
 - 5.1.3. the use of a specified type of contract, other than a firm fixed price contract, is in the best interest of the District, taking into consideration the following criteria:
 - 5.1.3.1. the type and complexity of the procurement item;
 - 5.1.3.2. the difficulty of estimating performance costs at the time the contract is entered into, due to factors that may include:
 - 5.1.3.2.1. the difficulty of determining definitive specifications;
 - 5.1.3.2.2. the difficulty of determining the risks, to the contractor, that are inherent in the nature of the work to be performed; or
 - 5.1.3.2.3. the difficulty to clearly determine other factors necessary to enter into an accurate firm fixed price contract;
 - 5.1.3.3. the administrative costs to the District and the contractor;
 - 5.1.3.4. the degree to which the District is required to provide technical coordination during performance of the contract;
 - 5.1.3.5. the impact that the choice of contract type may have upon the level of competition for award of the contract;

- 5.6.1.1.** the Procurement Officer determines that it is in the best interest of the District to lease the procurement item, after he or she investigates and considers the costs and benefits of alternative means of obtaining the procurement item;
 - 5.6.1.2.** all conditions for renewal and costs of termination are included in the lease;
 - 5.6.1.3.** the lease is awarded through a standard procurement process or a valid exception;
 - 5.6.1.4.** for a standard procurement process, the invitation for bids, request for proposals, or request for quotes states that the District is seeking, or willing to consider, a lease (or a lease purchase);
 - 5.6.1.5.** the lease is not used to avoid competition; and
 - 5.6.1.6.** the lease complies with all other applicable provisions of law or rule.
- 5.7.** Technology modifications. See UTAH ADMIN. CODE R33-12-502.
 - 5.7.1.** A contract may be modified to incorporate new technology or technological upgrades if the modification is agreed to by all parties and if the modification is executed using the process set out in the contract for other contract modifications. Otherwise, a contract may be modified to incorporate new technology or technological upgrades only if the modification is specific to the procurement item being solicited and substantially within the scope of the original procurement or contract and if the solicitation leading to the award of the contract contained one of the following statements: (1) that the awarded contract may be modified to incorporate new technology or technological upgrades associated with the procurement item being solicited, including new or upgraded systems, apparatuses, modules, components, and other supplementary items; or (2) that a maintenance or service agreement associated with the procurement item under contract may be modified to include any new technology or technological upgrades. No contract may be extended beyond the term of the contract included in the solicitation except as provided in the Utah Procurement Code.
- 5.8.** Multiyear contracts. See UTAH CODE ANN. § 63G-6a-1204.
 - 5.8.1.** The District may enter into a multiyear contract if the Procurement Officer determines, in his or her discretion, that doing so is in the District's best interest and the other requirements of this section are satisfied. The Procurement Officer shall consider whether the multiyear contract will:
 - 5.8.1.1.** result in significant savings to the District, including (a) reduction of the administrative burden in procuring, negotiating, or administering contracts, (b) continuity in operations of the District, or (c) the ability to obtain a volume or term discount;
 - 5.8.1.2.** encourage participation by a person who might not otherwise be willing or able to compete for a shorter term contract; or
 - 5.8.1.3.** provide an incentive for a bidder or offeror to improve productivity through capital investment or better technology.
 - 5.8.2.** The invitation for bids or request for proposals must (a) state the term of the contract, including all possible renewals of the contract, (b) state the conditions for renewal of the contract, and (c) include the pertinent funding and renewal condition provisions applicable to the contract.
 - 5.8.3.** Except as stated below with regard to contracts with federal funding and regardless of anything in an invitation for bids, request for proposals, or a contract, no multiyear contract may continue or be renewed for any year after the first year of the multiyear

contract if adequate funds are not appropriated or otherwise available to continue or renew the contract.

- 5.8.4. A multiyear contract that is funded solely by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:
 - 5.8.4.1. adequate funds to continue or renew the contract have not been, but are expected to be appropriated by, and received from, the federal government;
 - 5.8.4.2. continuation or renewal of the contract before the money is appropriated or received is permitted by the federal government; and
 - 5.8.4.3. the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.
- 5.8.5. A multiyear contract that is funded in part by federal funds may be continued or renewed for any year after the first year of the multiyear contract if:
 - 5.8.5.1. the portion of the contract that is to be funded by District funds are appropriated;
 - 5.8.5.2. adequate federal funds to continue or renew the contract have not been, but are expected to be, appropriated by, and received from, the federal government;
 - 5.8.5.3. continuation or renewal of the contract before the federal money is appropriated or received is permitted by the federal government; and
 - 5.8.5.4. the contract states that it may be cancelled or suspended, without penalty, if the anticipated federal funds are not appropriated or received.
- 5.8.6. The District may not continue or renew a multiyear contract after the end of the multiyear contract term or the renewal periods described in the contract, unless the District engages in a new standard procurement process or complies with a valid exception to standard procurement.
- 5.8.7. A multiyear contract, including any renewal periods, may not exceed a period of five (5) years, unless the Procurement Officer makes a written determination that the longer period is necessary in order to obtain the procurement item, or that a longer period is customary for industry standards, or that a longer period is in the best interest of the District. This written determination must be included in the file relating to the procurement. However, this limitation does not apply to a contract for the design or construction of a facility, a road, or a contract for the financing of equipment.

6. STATE CONTRACTS

- 6.1. If desired goods or services are available on a District or State contract (available on the Purchasing Department website), schools and departments may make purchases from a source identified in the contract using payment methods permitted by Nebo School District Policies DJA, *Accounting Procedures*, and DJB, *Purchasing*.
- 6.2. Most materials and goods should be purchased through a state contract.

7. APPROVAL PROCEDURES

- 7.1. An employee may not sign a contract unless authorized under the following procedures.
- 7.2. A contract may be signed only by the individuals authorized in Section 3.
- 7.3. Budget Manager Review

- 7.3.1.** A contract may not be signed unless the Budget Manager first reviews and approves the contract.
- 7.3.2.** The Budget Manager shall ensure the following before a contract is signed:
 - 7.3.2.1.** The contract accurately reflects the amount of money to be paid, and the budget is sufficient to pay the contract obligation.
 - 7.3.2.2.** The contract accurately reflects, and the District (including the applicable department and employees) can meet all nonfinancial obligations of the contract.
 - 7.3.2.3.** The contract accurately reflects the exact services that the parties have agreed will be provided.
 - 7.3.2.4.** The contract sets forth the length of time the parties intend to contract for.
 - 7.3.2.5.** The contract avoids advance payments and provides some protection if the goods or services are flawed or not delivered.
 - 7.3.2.6.** The contract complies with District policy.
- 7.3.3.** The language of a contract governs its interpretation, and the intent of the parties is determined from the writing alone. To understand the District's obligations, a Budget Manager must recognize that verbal representations made by vendors, salespeople, or others are not part of the contract and may not be relied upon.

7.4. Procurement Officer Review

A contract requiring the District to spend public funds may not be signed unless the District Procurement Officer has reviewed the contract to ensure compliance with the Utah Procurement Code, the Utah Procurement Rules, and Nebo School District Policy DJB, *Purchasing*.

7.5. Legal Review

A contract may not be signed unless legal counsel has reviewed it for compliance with applicable law. Legal counsel will review contracts for potential legal issues, including but not limited to the following.

- 7.5.1.** Governing law, jurisdiction, and venue. A contract should require that they be governed by Utah law and that jurisdiction and venue are set in Utah County, State of Utah.
- 7.5.2.** Arbitration. A contract should not require arbitration.
- 7.5.3.** Indemnification. A contract may not include an indemnification clause that waives any right to governmental immunity, damage caps, or coverage by Utah State Risk Management.
- 7.5.4.** Parties. A contract must identify the party as Nebo School District rather than an individual school or department.
- 7.5.5.** Confidentiality. A contract may not contain a confidentiality agreement inconsistent with Utah's Government Records Access and Management Act (GRAMA), Title 63G, Chapter 2 of the Utah Code.
- 7.5.6.** Term and termination. A contract must clearly set forth its term and any provisions for termination.
- 7.5.7.** Compliance with District policy.
- 7.5.8.** Insurance requirements.

- 7.5.9. Representations and warranties.
- 7.5.10. Limitation on damages.
- 7.5.11. Status verification system.
- 7.5.12. Excluded parties.
- 7.5.13. Rights and remedies.

8. CONTRACT INVENTORY

- 8.1. The Legal Department shall maintain an inventory of contracts entered into by the District.
- 8.2. An employee who signs a contract shall provide the original or a copy of the fully executed contract to the Legal Department. In most cases, the Budget Manager shall also maintain a copy of the contract.

EXHIBITS

None

REFERENCES

UTAH CODE ANN. § 53G-4-401
Utah Public Officers' and Employees' Ethics Act, UTAH CODE ANN. § 67-16
Government Records Access and Management Act, UTAH CODE ANN. § 63G-2-101 et seq.
Utah Procurement Code, UTAH CODE ANN. § 63G-6a-101 et seq.
Utah Educator Standards, UTAH ADMIN. CODE R277-515
Utah Procurement Rules, UTAH ADMIN. CODE R33
Nebo School District Policy DJA, *Accounting Procedures*
Nebo School District Policy DJB, *Purchasing*

FORMS

None

HISTORY

Adopted 12 December 2018.
