

Davis School District Policy and Procedures

Subject: 6F-103 Purchasing Policy
Index: Finance
Revised: May 7, 2018

1. PURPOSE AND PHILOSOPHY

This policy establishes standards applicable to all procurement activities made on behalf of the Board of Education of Davis School District (the “Board”) or the Davis School District (the “District”) to ensure transparency in the public procurement process; to ensure the fair and equitable treatment of persons who participate in the public procurement process; to provide increased economy in state procurement activities; and to foster effective broad-based completion within the free enterprise system.

2. APPLICABLE LAWS AND RULES

This policy is established pursuant to Utah Code §Title 63G, Chapter 6 and Utah Administrative Rules, Title R33, and requires all District employees to comply with the same. The Board has authority to establish procurement policies that are more restrictive than State laws or rules. Unless otherwise set forth in this policy, the provisions of state law and rule apply. Laws, rules and Board policies particularly relevant to purchasing activities include but are not limited to:

- 2.1. [Utah Code Ann. Title 63G Chapter 6a Utah Procurement Code](#) (“UPC”)
- 2.2. [Utah Administrative Rules Title R33 Purchasing and General Services](#)
- 2.3. [Utah Code Ann. Title 67 Chapter 16 Utah Public Officers' and Employees' Ethics Act](#) (“Ethics Act”)
- 2.4. [DSD Policy 2HR-204 Ethical Conduct of District Employees](#)

3. AUTHORITY

The Director of Purchasing (the “Director”) is the head of procurement for the District. The Director is delegated authority by the Board to implement purchasing procedures, carry out the procurement functions of the District, and to ensure such functions are in accordance with established laws, rules, policies, and written procedures. The Director may delegate, in writing, purchasing authority to other District employees as necessary to fulfill the purpose and philosophy of this policy. The Director is also given authority to withdraw delegated authority. Procurement participants receiving delegated authority are subject to Purchasing Department audit.

4. SCOPE

This policy applies to all purchases made with school/District funds regardless of the funding source, method of payment, or commodity purchased.

- 4.1. **Funding Source.** School/District funds include all funds, money, or accounts, regardless of the source of the money to be expended, which are owned, held, or administered by the District, a school, a team, a club, or a department. This includes, but is not limited to payments received or collected as:
 - 4.1.1. fees from a parent/student;
 - 4.1.2. pass-thru funds from a parent/student for travel, clinics, camps, events, and student-owned apparel and equipment;
 - 4.1.3. proceeds from school bookstores, concessions, advertising and vending;
 - 4.1.4. admissions to school-sponsored activities, athletic, and performance events;
 - 4.1.5. fundraisers;
 - 4.1.6. grants;
 - 4.1.7. donations;
 - 4.1.8. fines; or

- 4.1.9. general school/District funds.
- 4.2. **Method of Payment.** This policy applies to all purchases regardless of the method of payment, including but not limited to, purchase orders, expenditure requests, and District cards.
- 4.3. **Commodities.** This policy applies to all purchases of supplies, equipment, materials, construction, real property, and services.

5. DEFINITIONS

The following definitions are applicable in interpreting and applying this policy:

- 5.1. **“Conflict of Interest”** means actual or potential conflict of interest between an employee’s public duties and their private interests.
- 5.2. **“Contract”** means an agreement for the procurement or disposal of a procurement item. An “agreement” means a verbal or written promise, commitment, or understanding associated with consideration or mutual benefit typically documented in the form of a purchase order, contract, agreement, letter of intent, memorandum of understanding, lease, etc.
- 5.3. **“Contract Administrator”** means a person who administers a current contract, on behalf of a public entity, including:
 - 5.3.1. making payments relating to the contract;
 - 5.3.2. ensuring compliance with the contract;
 - 5.3.3. auditing a contractor in relation to the contract; or
 - 5.3.4. enforcing the contract.
- 5.4. **“Contribution”** means a voluntary gift or donation to a public entity for the public entity’s use, and not for a particular person employed by a public entity, including:
 - 5.4.1. a philanthropic donation;
 - 5.4.2. services;
 - 5.4.3. money; or
 - 5.4.4. other items of value:
 - [a] admission to seminar, vendor fair, charitable event, fundraising event, or similar event that relates to the function of the public entity;
 - [b] purchase of a booth at an event sponsored by the public entity or a group of which the public entity is a member; or
 - [c] sponsorship of an event that is organized by the public entity.
- 5.5. **“Family member”** means a parent, stepparent, spouse, sibling, stepsibling, child, stepchild, grandparent, great-grandparent, grandchild, uncle, aunt, first cousin or in-laws.
- 5.6. **“Gratuity”** means anything of value, including:
 - 5.6.1. money;
 - 5.6.2. a loan at an interest rate below the market rate or with terms that are more advantageous to the person receiving the loan than terms offered generally on the market;
 - 5.6.3. an award, except an award publicly presented in recognition of public service;
 - 5.6.4. employment;

- 5.6.5. admission to an event;
 - 5.6.6. a meal;
 - 5.6.7. lodging;
 - 5.6.8. travel;
 - 5.6.9. entertainment for which a charge is normally made; or
 - 5.6.10. compensation for private services rendered at a rate substantially exceeding the fair market value of the services.
- 5.7. **“Hospitality gift”** means a promotional or hospitality item, including, a pen, pencil, stationery, toy, pin, trinket, snack, nonalcoholic beverage, or appetizer. “Hospitality gift” **does not** include money, a meal, a ticket, admittance to an event, entertainment for which a charge is normally made, travel, or lodging.
- 5.8. **“Interested person”** means a person who is interested in any way in the sale of a procurement item, service, construction, or insurance to a public entity. “Vendor”, “supplier”, “merchant”, “contractor”, etc. are synonymous terms.
- 5.9. **“Kickback”** means a gratuity given in exchange for favorable treatment in a pending procurement or the administration of a contract.
- 5.10. **“Pending Procurement”** means a procurement at any stage, including:
- 5.10.1. preparing to engage in a standard procurement process, including preparing documents that will be used in the standard procurement process;
 - 5.10.2. engaging in a standard procurement process;
 - 5.10.3. evaluating, or making a recommendation regarding a quote, bid, or a response; and
 - 5.10.4. awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.
- 5.11. **“Procure” or “Procurement”** means buying, purchasing, renting, leasing, leasing with an option to purchase, or otherwise acquiring a procurement item; includes all functions that pertain to the obtaining of a procurement item or service including:
- 5.11.1. the description of requirements;
 - 5.11.2. the selection process;
 - 5.11.3. solicitation of sources;
 - 5.11.4. the preparation for soliciting a procurement item;
 - 5.11.5. the award of a contract; and
 - 5.11.6. all phases of contract administration.
- 5.12. **“Procurement Officer”** means the head of the procurement unit; a designee of the head of the procurement unit; or a person designated by policy or procedure established by the District.
- 5.13. **“Procurement Participant”** means a person involved in:
- 5.13.1. administering, conducting, or making decisions regarding a standard procurement process;
 - 5.13.2. making a recommendation regarding an award of a contract or regarding decisions to obtain a procurement item for a particular person;
 - 5.13.3. evaluating a quote, a bid, or a response; or
 - 5.13.4. awarding a contract or otherwise making a decision to obtain a procurement item from a particular person.

- 5.14. **“Property”** means ‘personal’ and ‘real’ properties as defined below:
- 5.14.1. **“Personal property”** means all tangible assets such as equipment, vehicles, instructional materials, supplies, furniture, textbooks, computers, software, construction, etc.
 - 5.14.2. **“Real property”** means real estate such as developed or undeveloped land and commercial/residential buildings.
 - 5.14.3. **“Excess property”** generally means personal property no longer in use or needed at a specific location and, in all likelihood, the condition or nature of such can be used to satisfy an existing need within the District.
 - 5.14.4. **“Surplus property”** generally means property no longer in use or needed at a specific location, and, in all likelihood, the condition or nature of such cannot be used to satisfy an existing need within the District.
- 5.15. **“District Card”** means a purchasing instrument provided by a financial institution designated and approved by the Superintendent’s Office.
- 5.16. **“Specification”** means any description of the physical or functional characteristics, or nature of a procurement item included in a request for quotes, invitation for bids, or request for proposals, or otherwise specified or agreed to by a procurement unit, including a description of a requirement for inspecting or testing a procurement item; or preparing a procurement item for delivery.
- 5.17. **“Standard Procurement Process”** means one of the following methods of obtaining a procurement item in accordance with this policy:
- 5.17.1. small purchases;
 - 5.17.2. request for proposals; or
 - 5.17.3. invitation to bids.
- 5.18. **“Substantial interest”** means the ownership, either legally or equitably, by an individual or family member, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity or \$2,000 total value of interest.

6. GENERAL PROCUREMENT POLICIES

- 6.1. **Contract Provisions**
Contracts/agreements/leases that:
- 6.1.1. contain an automatic renewal clause are prohibited;
 - 6.1.2. extend beyond the current fiscal year must contain a “no Non-Payment Default” clause;
 - 6.1.3. are anticipated to be equal to or greater than \$10,000; or extend beyond one (1) fiscal year must be approved by the Business Administrator or designee **prior** to initiating the bid process.
- 6.2. **Method of Payment**
Purchases of goods and services, shall be made through a District cards, purchase order or District claim process.
- 6.3. **Tax Exempt Status Number**
The District’s tax exempt status number is to be used exclusively to make purchases for use by the Davis School District and is not for personal use by individuals, staff, or students.

6.4 **Shipment of Purchases**

All purchases made with District funds and purchasing instruments must be shipped to a District location.

7. **COMPETITIVE SOLICITATIONS**

Competitive pricing shall be obtained for all purchases unless otherwise provided for in this policy. The level of competitive solicitation and applicable procedures for a given procurement is determined by the amount of the total purchase price.

7.1. **Determination of Total Purchase Price**

In determining the applicable threshold and level of competitive solicitation, the following provisions shall be applied to determine the amount of the total purchase price.

- 7.1.1. "Individual Procurement" is the maximum total amount expended to purchase a single item regardless of whether the amount is paid in one payment or in multiple payments.
- 7.1.2. "Single Procurement Aggregate" is the maximum total amount expended to obtain multiple individual items from one source at one time.
- 7.1.3. "Annual Cumulative Procurement" is the total amount expended to purchase individual items from the same source during the same fiscal year.
- 7.1.4. "Contracts, Agreements, or Leases" for purchases which require multiple payments (monthly, quarterly, annually, etc.) over a fixed period, the total purchase price must be determined by calculating the maximum number of recurring payments including all potential options to renew or extend beyond the initial contractual period, i.e. *recurring payment amount x maximum number of recurring payments = total amount of purchase*.
- 7.1.5. Purchases may not be divided into smaller units to avoid using the applicable bidding process.
- 7.1.6. An increase in purchase order quantity or price requires principal/director approval and is subject to the availability of additional funds. An increase with the intent to avoid competition is considered a subdivision of the purchase and is subject to disciplinary action by the District as well as referral to law enforcement authorities for criminal prosecution.

7.2. **Small Purchase Thresholds**

Small purchases are those where the amount of the total purchase price is less than \$25,000; except that:

- 7.2.1. small purchases for small capital outlay (SCO) projects or construction services shall be less than;\$80,000
- 7.2.2. small purchases for architect/engineering services shall be less than \$100,000;
- 7.2.3. small purchases for construction or architect-engineer services pertaining to Career and Technology Education's (CTE) Student Home Building program shall be less than \$20,000; and
- 7.2.4. small purchases for services of professionals , and consultants shall be less than \$100,000 by direct negotiation after reviewing the qualifications of 3 vendors.

7.3. **Small Purchase Procedures**

7.3.1. **Generally Applicable Procedures**

The following procedures shall apply to all small purchases of goods or services:

- [a] Schools/departments are encouraged to consult with and utilize the services available from the Purchasing Department.

- [b] Schools/departments are encouraged to utilize the Materials Distribution Center (“MDC”), District, State, or approved cooperative contracts. See *Section 8.1 for detail*.

7.3.2. **STUDENT OUT OF STATE TRAVEL**

All out of state travel involving students shall be bid by the District Purchasing Department regardless of cost, unless otherwise directed by the Purchasing Director.

7.3.3. **Purchases less than \$3,500 where:**

- [a] **no single item exceeds \$1,000 in cost** – schools/departments are encouraged to seek the best possible sources of supply based on factors such as price, prior vendor performance, and delivery.
- [b] **a single item’s cost exceeds \$1,000** – no fewer than two vendors shall be contacted by the requesting school/department for verbal price quotes.
- [c] Quotes shall be entered by the requestor in the District’s financial accounting system and shall include:
 - (i) a complete description of product or service;
 - (ii) quantity and unit of measure;
 - (iii) the vendor name;
 - (iv) address;
 - (v) name of person providing the quote;
 - (vi) quote date;
 - (vii) unit and extended pricing;
 - (viii) shipping charges, if applicable;
 - (ix) shipping and delivery dates;
 - (x) payment terms including the discount for prompt payment, if applicable; and
 - (xi) a brief comment explaining the rationale for vendor selection.
- [d] Documentation shall be retained by the purchasing school/department in accordance with state retention schedules, and shall be subject to Purchasing Department review/approval and internal/external audits.

7.3.4. **Purchases of \$3,501 to \$25,000**– the same procedures apply as in Section 7.3.3 above **except:**

- [a] the requesting school/department must obtain two written quotations on vendor stationery, either electronic, fax, or hardcopy;
- [b] documentation, including the written quotes and award justification must be submitted to the Purchasing Department for final approval; and
- [c] the Purchasing Department shall retain the documentation.

7.4. **Purchase Procedures for Purchases Greater than \$25,000**

Purchases of \$25,000 or more shall be bid by the Purchasing Department in accordance with adopted bidding policies and procedures unless otherwise directed or exempted under this policy.

- 7.4.1. Requesting schools/departments shall provide the Purchasing Department with complete descriptions, specifications, plans, etc. and suggested sources for the goods/services requested.
- 7.4.2. The Purchasing Department shall coordinate the posting, advertising, receipt, opening, review, evaluation, awarding, and associated notifications.

8. EXCEPTIONS TO STANDARD PROCUREMENT PROCESS

8.1. MDC and Approved Contracts

Utilization of the District's MDC and approved contracts established by the District, State, and approved cooperatives are encouraged.

- 8.1.1. Small purchases may be made from the District's MDC, or District approved contracts without obtaining competitive pricing.
 - [a] Where more than one contract is established for the same product or service, it is suggested, but not required to review the other contracts to assure the best value before making a procurement decision.
 - [b] Where more than one vendor has been approved to provide the same product or service, the Purchasing Department, in order to ensure equal treatment of vendors, may require the selection of a vendor by one of the following methods:
 - (i) a rotation system, organized alphabetically, numerically, or randomly;
 - (ii) assigning vendors to a specified geographical area; or
 - (iii) classifying each vendor based on each vendor's particular expertise, qualifications, or field.
- 8.1.2. Where the total purchase price exceeds the applicable small purchase threshold, the contractor should be consulted to determine if additional volume or educational discounts apply. The Purchasing Department may also be contacted to determine if a standard competitive procurement process would be advantageous.
- 8.1.3. **No other contracts** established by a political subdivision of the State of Utah; any other state and its political subdivisions; the federal government and its political subdivisions, including General Service Administration (GSA) contracts, or other third-party cooperative procurement organizations shall be used to make purchases or used as the basis for not seeking appropriate competition without first obtaining Purchasing Department approval.

8.2. Award of Contract without Engaging in a Standard Procurement Process (Sole Source Purchase)

- 8.2.1. Sole source procurements shall be used only if the goods or services are reasonably available from a single supplier. Any request that the procurement be restricted to one potential contractor or vendor shall be:
 - [a] accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. In cases of reasonable doubt, competition shall be solicited;
 - [b] subject to publication for public comment for at least seven (7) days at the Purchasing Department's discretion. Requests of \$50,000 or greater must be published.
 - [c] subject to final determination by the Purchasing Department as to qualification for sole source procurement.
- 8.2.2. The procurement officer or designee shall conduct negotiations, as to pricing, service, delivery, and terms whenever a sole source approval has been granted.

8.3. Emergency Procurements

An emergency condition is a situation which creates a threat to public health, welfare, or safety as may arise by reason of floods, epidemics, riots, equipment failures, or other reason as may be determined by the Director or designee. The existence of this

condition creates an immediate and serious need for supplies, services, or construction to prevent or minimize further damage, harm, or risk that cannot be met through normal procurement methods.

- 8.3.1. Emergency procurements shall be made according to policy as near as practicable while still assuring the required supplies, services, or construction items are procured in time to meet the emergency.
- 8.3.2. Emergency procurements using other than normal bid or price quotation procedures shall be made by the Purchasing Department whenever possible.
- 8.3.3. Local school/district administrators confronted with an emergency condition occurring after normal business hours, on weekends, or District holidays are authorized to make the necessary purchase(s) to meet the emergency.
 - [a] Such competition as is practicable shall be obtained.
 - [b] The administrator responsible for the procurement shall notify the Purchasing Department of the purchase as soon as reasonably practical.

8.4. Director Authorized Exceptions

The Director or designee may authorize alternative procurement methods to purchase certain items when determined to be more practical or advantageous to the District. Alternative procurement methods, including informal price quotes and direct negotiations may be authorized for the following:

- 8.4.1. Used vehicles including used material handling equipment, heavy equipment, grounds/facilities maintenance equipment, etc.;
- 8.4.2. Facility rentals, hotels, conference centers, etc., and related services for District and school sponsored events and activities;
- 8.4.3. Food/catering services for approved events and training/instructional programs;
- 8.4.4. Honorariums for speakers and professional trainers/instructors;
- 8.4.5. School fundraising programs offered/organized through vendor sources including book fairs;
- 8.4.6. Products purchased for re-sell in District-approved stores and concession stands provided the product sold is made available to all students and is not:
 - [a] sold for fundraising purposes specific to a select student group, team, club, etc.;
 - [b] sold as a means of providing an outlet to a specific student group, team, club, etc. to purchase optional clothing, equipment, and products in support of the program of a select group, team, club, etc.;
 - [c] sold with the intent to by-pass the competitive bidding process.

8.5. Business Administrator Authorization

Purchases made through any means other than those described above shall be authorized by the Business Administrator or designee.

8.6. Documents

Documentation of the approved alternate procurement method utilized shall be retained on file subject to audit.

9. SPECIFICATION DEVELOPMENT

Specifications, other than construction and design, shall be drafted by the school administrator, department director, appropriate supervisor or their designees. Construction and design specifications shall be drafted by a licensed architect, engineer, etc. All specifications shall be submitted with the requisition. Specifications shall be drafted with the objective of clearly describing the requirements and to encourage competition by identifying satisfactory alternate

descriptions, use of standard specifications, and use of brand names, but only as a means of defining the standard of quality, function, and performance characteristics desired.

10. PURCHASING FILES

10.1. Prospective Bidder Files

The Purchasing Department shall maintain or cause a third-party service provider to maintain a list of prospective vendors for the various categories of products and services procured by the District. This list shall incorporate those who request to receive bids as well as those added through the Purchasing Department's effort to solicit all available sources. All schools/departments should refer prospective vendors to the Purchasing Department for instructions on how prospective bidders can register.

10.2. Solicitation Files

The Purchasing Department, in accordance with appropriate retention schedules, shall maintain paper or electronic records, or cause a third-party to maintain records of all solicitations pending, current, on-hold, or awarded; including solicitation response, tabulations, evaluations, award recommendations, and other associated documentation as required by the UPC and Rule. Unless, otherwise protected under the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code, the information is a public record and shall be available to public review.

11. DISTRICT CARDS

Card programs shall be limited to accounts approved by and be administered under the direction of the Business Administrator or designee(s).

- 11.1. Approved Card programs shall be limited to the type of credit account that is fully due and payable each thirty (30) day cycle. Use of revolving credit instruments and accounts which allow unpaid balances to be carried forward into the next billing period and thereby accrue interest are prohibited.
- 11.2. Cards shall have pre-approved spending limits as determined by the Business Administrator or designee. The Business Administrator or designee is authorized to grant exceptions on Card limits.
- 11.3. District cards shall be governed by the Credit Card Guidelines as developed by District administration.
- 11.4. A Card program shall not be established with the ability to withdraw a cash advance.
- 11.5. Requests for Cards shall be submitted electronically via the District's financial accounting system and be pre-approved by the Principal or Director prior to issuance.
- 11.6. **School/Department Supervisors** shall be responsible for the oversight and proper use of the Card programs at their respective locations; shall review all Card purchases at least monthly; and are authorized to request suspension or cancellation of Card privileges.

- 11.7. **Cardholders** shall accept and abide by the terms of the Credit Card Guidelines prior to being issued a Card.
- 11.8. Violations of Card use, including but not limited to excessive, flagrant, or unresolved charges are causes for Card cancellation and/or disciplinary action up to and including dismissal from employment.

12. GIFT CARDS

- 12.1. The acquisition of gift cards with District funds and purchasing instruments is allowed if the gift cards:
 - 12.1.1 are not purchased for a District employee; and
 - 12.1.2 are controlled, secured, and treated as cash.
- 12.2. An inventory record of gift cards purchased shall be maintained and is subject to audit.
 - 12.2.1. The inventory record shall include the merchant, date purchased, method of purchase, and gift card amount.
 - 12.2.2. The recipient of the card should sign the inventory record verifying the receipt of the gift card. If unable to secure a recipient's signature, at least two employees shall be involved with distributing the gift cards and shall each sign the inventory record acknowledging the gift cards were used as indicated in the record.

13. DISPOSITION OF EXCESS AND SURPLUS PROPERTY

13.1. All Property is District Property

Existing personal property acquired by schools or departments, excluding leased or loaned, regardless of funding source; whether by transfer, gift, grant, or by donation is District property. The Business Administrator or designee determines the disposition of all excess and surplus properties.

13.2. Authority of Schools/Departments in the Disposition of Property

No school or department may give, donate, sale, barter, trade, advertise or post for sale District property, regardless of condition, to any person, group, organization, employee or family member except as may be authorized by the Business Administrator or designee. All proceeds acquired as a result of sale or disposal belong to the District's general fund, unless the Business Administrator determines otherwise.

13.3. Pick Up and Delivery Fees

The MDC is authorized, at its discretion, to charge schools/departments a pick-up, transfer and/or delivery fee to cover unnecessary labor, fuel, and vehicle operating expenses incurred beyond its control as a result of the requestor's controllable actions or inactions. Examples of conditions that may warrant a fee are found in the Department's procedures.

13.4. Inspection of Excess Property Prior to Request for New Property

District administrators are strongly encouraged to first inspect available excess property and utilize that which would satisfy school/department needs before submitting a requisition to purchase new.

13.5. Disposal of Personal Property

13.5.1. The Director shall dispose of the excess or surplus properties in the most cost effective and efficient manner attempting to recoup the maximum value or goodwill. Whenever possible and practical, attempts to dispose of the surplus might include the following before disposing as trash or refuse:

- [a] return the excess or surplus property to the original supplier for credit;
- [b] issue a competitive request for offers;
- [c] hold a public or electronic auction or surplus sale;
- [d] sell or donate to the Davis Education Foundation or another educational, governmental, charity, non-profit, or other community-based organization; or
- [e] sell as recyclable or scrap material.

13.5.2. The Director or designee shall enable staff to set and establish market value of the property and to negotiate a fair and reasonable price. The primary intent of establishing value and negotiate pricing is to recoup the cost of storage, handling, sale/auction expenses and any anticipated disposal costs.

13.6. District Employee Preference

District employees or family members may not acquire excess or surplus personal properties for personal use unless offered to the general public. District employees or family members shall not be afforded special privileges or preferences in acquiring personal property. Employees may acquire property by responding to a competitive bid solicitation or by participating in a public sale or auction.

13.7. Use of Third-Party Software Tools

The Director may utilize third-party eProcurement or eSurplus software solution tools and services to efficiently and effectively manage the storage, sale, and disposition of excess and surplus District properties as an alternative to or in addition to a public auction or sale.

13.8. Computers, Telecommunications, Electronic Equipment, and Textbooks

13.8.1. The disposition of surplus computers, wireless phones, related electronic and telecommunications equipment is under the direction of the Administrator of Technology Services who shall establish procedures and maintain records.

13.8.2. The disposition of textbooks is subject to Utah Code Ann. §53G-7-606, Utah Administrative Rule R277-433 and District policy 4I-200 under the direction of the Director of Curriculum and Instruction who shall establish procedures and maintain records.

13.9. Disposal of Real Property

Under the direction of the Board and superintendency, surplus real property shall be disposed of in accordance with Utah Code Ann. Title 53G, Chapter 4, Part 9 School District Surplus Lands Act.

14. VIOLATIONS AND PENALTIES

The Utah Procurement Code, the Utah Public Officers' and Employees' Ethics Act, and DSD 2HR-204 Ethical Conduct of District Employees provide standards of ethical conduct with regard

to the procurement process. These standards are instituted to ensure the highest principles of behavior and uphold the trust vested in District employees by the community.

Violations of this policy and the applicable laws, rules, and policies cited above shall be subject to disciplinary action up to and including termination from employment, disqualification/debarment from the District procurement processes, removal from office, and/or referral to law enforcement authorities for possible criminal prosecution.

14.1. Violations by Interested Persons

It is a violation of both District Policy and Utah law for an interested person to give, offer, pledge, or promise to give:

- 14.1.1. a gratuity, to a procurement participant or an individual who the person knows is a family member of a procurement participant;
- 14.1.2. a kickback to a procurement participant or to another person for the benefit of a procurement participant;
- 14.1.3. a contribution to a public entity or an organization to which a procurement participant belongs, where the contribution is given, offered, or promised with the intent to induce a person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution;

14.2. Violation by Procurement Participants/Employees

14.2.1. It is a violation of both District Policy and Utah law for a procurement participant to ask, receive, offer to receive, accept, ask, or ask for a promise to receive:

- [a] a gratuity from the contractor for that contract;
- [b] a kickback for the procurement participant or for another person;
- [c] a contribution on behalf of a public entity or an organization to which a procurement participant belongs, where the person accepts or receives the contribution in exchange for making a procurement decision in reciprocation for the contribution.

14.2.2. It is a violation of both District Policy and Utah law for a District employee, to use their position or influence to obtain a personal benefit for the employee, or for a family member of the employee, or for any other person from an interested person including, but not limited to:

- [a] purchases at discounted rates or prices not available to all District employees;
- [b] acceptance of goods and services at no or reduced cost; or
- [c] purchases with the intent of avoiding sales taxes.

14.2.3. It is a violation of both District Policy and Utah law for a District employee to engage a person to intentionally or knowingly divide a procurement into one or more smaller procurements with the intent to make a procurement qualify as a small purchase.

14.2.4. It is a violation of both District Policy and Utah law for a District employee to participate in a transaction involving a business as to which the employee has a substantial interest unless the employee appropriately disclosed the interest and is approved by the Board or designee. If not approved, the employee may not function as a procurement participant for the acquisition of the product or service. The Principal/Director may direct another without a conflict to act as the Participant always maintaining an arms-length distance from the conflicted employee or involve the Purchasing Department in acquiring the product or service.

14.3. Exceptions

- 14.3.1. It is not a violation of District Policy or Utah law for a person to:
- [a] give, offer, promise to give, receive, or accept a hospitality gift if, as it relates to a procurement participant if:
 - (i) the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant in relation to a particular procurement is less than \$10; and
 - (ii) the total value of all hospitality gifts given, offered, or promised to, or received or accepted by, the procurement participant from any one person, vendor, bidder, responder, or contractor in a calendar year is less than \$50;
 - [b] give, offer, promise, pledge, receive, or accept a contribution to a public entity or an organization to which a procurement participant belongs, where the contribution is not intended to induce a person to make a procurement decision, or to take action in relation to the administration of a contract, in reciprocation for the contribution.
- 14.3.2. An employee may obtain goods and services for personal use at discounted rates where suppliers typically offer educational discounts to all District employees regardless of position or influence. Employees are responsible for the payment of sales tax and purchase arrangements shall not be made through the use of District purchase orders, or Cards.
- 14.3.3. An interested person who desires to express tangible appreciation to employees, in relation to procurement participants and contract administrators, by means of a periodic or seasonal hospitality gift, is encouraged to contribute the gift or value thereof directly to Davis Education Foundation which has been specifically established for the purpose of accepting contributions and donations from patrons and friends of education, and, as an established 501(c)(3) non-profit organization, qualifies the donor for possible tax advantages. An interested person's commitments to be responsible and responsive to District needs, provide quality products and services at fair prices, provide exceptional customer support; all in a reasonable time frame are adequate and sufficient expressions of appreciation.

14.4. Penalties

- 14.4.1. A violation of any provision of the UPC or this policy is subject to disciplinary action up to and including dismissal from employment or removal from office.
- 14.4.2. If a person who is awarded a contract intentionally violates a provision of this section of this policy in relation to the contract, the contract is void and unenforceable.
- 14.4.3. In addition to administrative penalties allowed by law, rule and policy, violations outlined in this section are subject to the following criminal penalties:
- [a] a felony of the second degree if the total value of the gratuity or kickback is \$1,000 or more;
 - [b] a felony of the third degree if the total value of the gratuity or kickback is \$250 or more, but less than \$1,000;
 - [c] a class A misdemeanor if the total value of the gratuity or kickback is \$100 or more, but less than \$250;
 - [d] a class B misdemeanor if the total value of the gratuity or kickback is less than \$100;
 - [e] a felony if a conflict of interest results in compensation with a total value greater than \$250.00;

- [f] a misdemeanor if a conflict of interest results in compensation with a total value less than \$250.00; or
- [g] a felony if the value of the divided procurements is \$250,000 or more;
- [h] a misdemeanor if the value of the divided procurements is less than \$250,000.

15. LEGAL AND CONTRACTUAL REMEDIES

Protests and Appeals shall be administered in accordance with the procedures in Utah Code Ann. Title 63G, Chapter 6a, Part 16 through Part 19.

- 15.1. The Director shall serve as the designated protest officer for the District.
- 15.2. Any person who is an actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract, debarment, or suspension may protest to the designated protest officer who is the Director.
 - 15.2.1. A protest with respect to an invitation for bids or a request for proposals shall be submitted in writing prior to the opening of bids or the closing date for proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to the protest prior to bid opening or the closing date of proposals. The protest shall be submitted in writing within seven (7) days after the day the aggrieved person knows or should have known of the facts giving rise thereto.
 - 15.2.2. A protest of a decision to debar or suspend shall be submitted in writing within seven (7) days after the debarment or suspension is ordered.
 - 15.2.3. A person who fails to timely file a protest may not bring a protest, action, or appeal challenging a solicitation or award of a contract, or a debarment or suspension, before the Director or designee, an appeals panel, a court or any other forum.
- 15.3. The Director shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve the protest.
- 15.4. The Director may dismiss a protest not filed in accordance with requirements of Utah Code Ann. Title 63G, Chapter 6a, Part 16 and this policy.
- 15.5. **Appeal**
 - 15.5.1. A person may appeal the decision of the Director to the chair of the Utah State Procurement Policy Board or its designee in accordance with requirements of Utah Code Ann. Title 63G, Chapter 6a, Part 17 Procurement Appeals Board.
 - 15.5.2. A person filing an appeal is required to post a security deposit or bond. The deposit/bond is subject to forfeiture should the person filing the appeal fail to prevail on appeal and it is determined that the appeal is frivolous or that its primary purpose is to harass or cause delay.

16. Jurisdiction

Unless an action has been initiated previously in district courts for essentially the same cause of action, the Board shall have jurisdiction to review and determine de novo a protest or appeal decision not considered to be in the District's best interest.

REFERENCES

Utah Code Annotated Title 63G, Chapter 6a - Utah Procurement Code

[Utah Code Ann. §53E-3-703](#) – Construction and alteration of schools and plants – Advertising for bids - - Payment and performance bonds – Contracts - - Bidding limitations on local school boards – Interest of local school board members.

Davis School District complies with the principle that minority and women business enterprises must be given a fair opportunity to compete for all procurement administered by the Davis School District.

FORMS

[Disclosure Pursuant to Utah Public Officers' and Employees' Ethics Act](#)
[Governmental Records Access and Management Act \(GRAMA\) Request](#)
[Purchasing Forms](#)

GUIDELINES

[Credit Card Guidelines](#)

RELATED POLICIES AND PROCEDURES

[2HR-204 Ethical Conduct of District Employees](#)
[Student Activities Handbook](#)

DOCUMENT HISTORY:

Adopted: July 1, 1982

Adopted: July 1, 1994 – Updated to comply with subsequent legislative changes through March 1994.

Revised: April 18, 1995

Revised: June 16, 1998 – purchasing card added

Revised: October 17, 2000 – took out procedure; added travel

Revised: September 23, 2003 – changes to requisition creation and purchase approval; added small purchases for construction less than \$50,000.

Revised: August 17, 2004 – added small purchases for architect-engineer services less than \$50,000.

Revised: December 19, 2008 – increased purchase card transaction limit per purchase from \$250 to \$1,000

Revised: February 3, 2009 – Increased travel card transaction limit per purchase to \$30,000. Made technical changes to take into account changes in the District purchasing procedure which removed the ability to schools to issue checks. Added section for disposition of excess and surplus property and legal and contractual remedies.

Revised: July 1, 2014 – Make revisions consistent with changes in state law.

Revised: February 6, 2018 – Made revisions consistent with changes in state law and in response to a District audit. Education code referenced updated in accordance with 2018 recodification.

Revised by consent March 6, 2018 – Added language on status of District Tax Exempt Number.

Revised: May 7, 2018 – Revision in gift cards. Cannot be purchased for employees.