**ESSER Request for Exemption from Competitive Procurement**

**General ESSER Spending Considerations**

An SEA is authorized under the Uniform Guidance to use any authority provided for its procurement policies and procedures that allows for noncompetitive procurements (2 CFR § 200.317 and USED FAQs May 2021 C.27). When state and federal procurement requirements differ, the most restrictive requirement applies.

Under 2 CFR § 200.320(c)(4), an SEA, to the extent doing so is consistent with its State procurement policies and procedures, may authorize an LEA to use noncompetitive procurement in response to a written request. In the alternative, the USED may grant similar flexibility. Under the Uniform Guidance, all other non-Federal entities, including LEAs, must follow the procurement provisions in 2 CFR §§ 200.318 through 200.327. LEAs must have documented procurement procedures reflecting applicable Federal, state, and local laws and regulations (2 CFR § 200.318). Under 2 CFR § 200.320(c), an LEA may, to the extent doing so is consistent with its policies and procedures, use noncompetitive procurement.

Idaho procurement requirements do not apply to:

1. Expenditures less than $50,000 (Idaho Code 67-2803(2)) (State and Federal requirements align);

(Idaho procurement requirements apply:

* Idaho Code 67-2806(1): $50,001 - $100,000 – solicit written bids from three vendors
* Idaho Code 67-2806(2): $100,001+ - open competitive sealed bid process
* Idaho Code 67-2806A: $100,001+ – Request for proposal
* Exclusion
  + Idaho Code 67-2803 Goods or Services competitively bid by the state of Idaho, one (1) of its political subdivisions, or an agency of the federal government. Contracts entered into by the division of purchasing.
* Cooperative Purchasing
  + With approval of governing board, participate in agreements with the State of Idaho, other Idaho political subdivision, other government entities, or associations thereof)

1. Curricular materials (Idaho Code 33-601(2)) as defined as textbooks, instructional media including software, audio/visual media, and internet resources (Idaho Code 33-118A); (Federal requirements are more restrictive).
2. Emergency expenditures approved by the governing board as defined under Idaho Code 67-2808(1)(a) do not require a formal bidding procedure (Federal requirements are more restrictive); and
3. Sole source, only one (1) vendor reasonably available, expenditures approved under the governing board must make notice of a sole source procurement published in the official newspaper of the LEA at least fourteen calendar days prior to the award of the contract (Idaho Code 67-2808(2)) (Federal requirements are more restrictive).

**Please complete the requested information listed below; complete one *Exemption from Competitive Procurement form* for each service.**

**ESSER Request for Exemption from Competitive Procurement**

## **LEA INFORMATION REQUIRED**

1. **LEA Number and Name:**  Click or tap here to enter text.
2. **Identify the activity/product/service for which the LEA is requesting a competitive procurement exemption:** Click or tap here to enter text.
3. **What is being purchased?**  Click or tap here to enter text.
4. **Estimated/Actual Cost of Purchase**:  Click or tap here to enter text.
5. **Total ESSER funds on this expenditure:**

|  |  |
| --- | --- |
| ESSER I | Click or tap here to enter text. |
| ESSER II | Click or tap here to enter text. |
| ESSER III | Click or tap here to enter text. |

## **ACTION REQUIRED:**

In choosing one or more of the circumstances below, the LEA affirms the circumstance is consistent with its own policies and procedures, which include a conflict of interest policy (2 CFR § 200.112) and disclosure to the State Department of Education any violation involving fraud, bribery, or gratuity affecting the federal award (2 CFR § 200.113).

There are specific circumstances in which non-competitive procurement can be used. **Please check the appropriate box that fits the LEA’s reason for requesting non-competitive procurement for this purchase:**

1. Curricular materials, such as textbooks, instructional media including software, audio/visual media, and internet resources per Idaho Code 33-601(2). (June 15, 2021 email to SDE from USED states that the LEA meets the requirement for the exception in 2 CFR 200.320(c)(4) because Idaho “has provided an exemption for the procurement of curricular materials and the LEA is seeking permission from the SEA.”).

2. The item is available only from a sole source, only one (1) vendor reasonably available.

Required documentation retained on file, available upon request:

* + - Approval of the governing board (Local Board of Trustees)
    - sole source documentation
    - Invoicing/ estimate of cost of purchased item
    - Bid-solicitation attempts, if applicable
    - Newspaper advertisement of the LEA’s intent for sole source procurement

3.The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation for a service/product.

Required documentation retained on file, available upon request:

* Approval of the governing board (Local Board of Trustees)
* Narrative/ explanation outlining the urgency of purchase, narrative/ documentation from vendor outlining how procurement process could delay performance of contract

4.After solicitation of a number of sources, competition is determined inadequate.

Required documentation retained on file, available upon request:

* Responses to requested bid showing that vendors cannot perform service

*An LEA may use noncompetitive procurement for the circumstances listed above, and to the degree doing so is consistent with its own policies and procedures.*

**IMPORTANT: Any entity using ESSER funds for construction or renovation must comply with all relevant UGG rules, EDGAR rules (34 CFR §76.600, 34 CFR §75.600-75.617), and Davis-Bacon (20 U.S.C. 1232b) prevailing wage rules.**

## **SIGNATURES REQUIRED**

|  |  |
| --- | --- |
| Superintendent/Charter Administrator Printed Name:  Click or tap here to enter text. | |
| Superintendent/Charter Administrator Signature: | Date:  Click or tap to enter a date. |
| Name of person submitting form IF different from Superintendent/Charter Administrator:  Click or tap here to enter text. | Date:  Click or tap to enter a date. |

## **FOR SDE USE ONLY**

The pass-through entity (State Department of Education) expressly authorizes a noncompetitive procurement process in response to this written request from the LEA**.**

|  |  |
| --- | --- |
| First and Last Name of SDE Approver:  Click or tap here to enter text. | |
| SDE Approver Signature: | Date:  Click or tap to enter a date. |
| Comments:  Click or tap here to enter text. | |