

**NORTH TOOELE COUNTY FIRE PROTECTION SERVICE DISTRICT
RESOLUTION NO. 2001-002**

A RESOLUTION ESTABLISHING A PROCUREMENT POLICY FOR THE NORTH TOOELE COUNTY FIRE PROTECTION SERVICE DISTRICT.

SECTION ONE: PURPOSE. This resolution is for the purpose of adopting a procurement policy for the North Tooele County Fire Protection Service District (hereafter district) in conformity with the provisions of Section 63-56-14 of the Utah Code. This resolution is also intended to limit the expenditure of public funds to those items approved in the district's annual budgets, to ensure that all goods and services are acquired under conditions most beneficial to the district, and to authorize certain expenditures without the Board of Trustees' prior to approval.

SECTION TWO: ADOPTION OF PROCUREMENT POLICY. The following procurement policy for the North Tooele County Fire Protection Service District is hereby adopted.

ARTICLE I. GENERAL PROVISIONS

1. The underlying purposes of this policy are:
 - A. To ensure fair and equitable treatment of all persons who wish to, or do conduct business with the North Tooele County Fire Protection Service District (hereafter District).
 - B. To provide for the greatest possible economy in District procurement activities.
 - C. To foster effective broad-based competition within the free enterprise system to ensure that the District will receive the best possible service or product at the lowest possible price.
2. Compliance - Exemptions from this policy.

A. The District shall comply with the applicable provisions of the Utah Procurement Code as required by Section 63-56-2 of the Utah code. A copy of the current provisions of the Utah Procurement Code, that apply to the District as of the effective date of this resolution is attached hereto as Exhibit "A".

B. This policy are defined in Section 63-56-5 of the Utah Code.

(1) Board means the Board of Trustees of the North Tooele County Fire Protection Service District;

(2) District means the North Tooele County Fire Protection Service District.

(3) District Administrator means the person appointed by the Board of Trustees to administer the affairs of the District and the person designated as the purchasing agent of the District.

(4) District Chief, means the Fire Chief of the North Tooele County Fire Protection Service District as appointed by the Board of Trustees.

ARTICLE II. SMALL PURCHASES

1. Procurement's of \$5,000 to \$50,000.

A. The Board may authorize contracts and procurement's estimated to cost from \$5,000 to \$50,000 by soliciting at least two firms to submit written quotations. The award shall be made by the Board to the person offering the lowest acceptable quotation. The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the District.

2. Procurement's of more the \$150.00 to \$5,000.

A. The Board may authorize contracts and procurement's estimated to cost form \$150.00 to \$5,000 in any manner that the Board shall deem to be adequate and reasonable.

3. Procurement's up to \$150.00

A. Procurement's of supplies and services of up to \$150.00 may be made by the District Administrator, the District Chief or designee. Receipts for such items must be provided to the District Administrator within three days of the purchase.

4. Volunteer Expenditures.

A. District volunteers are authorized to purchase fuel and supplies at District approved vendors for amounts not exceeding \$50.00. Receipts for such items shall be provided to the District Administrator within three days of the purchase.

5. Division of Procurement's.

A. Procurement's shall not be divided in order to qualify for the procedures outlined in this resolution.

ARTICLE III. SOLE SOURCE PROCUREMENT.

1. Conditions for Use of Sole Source Procurement.

A. The procedures concerning sole source procurement set forth herein are permissible only if, in the discretion of the Board, a requirement is reasonably available only from a single source. A requirement for a particular proprietary item may not be satisfied by sole source procurement if, in the judgment of the Board, there is more than one potential bidder or offer for that item. Examples of circumstances which could also necessitate sole source procurement are:

- (1) where the compatibility of product design, equipment, accessories, or replacement parts is paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing;
- (3) procurement of public utility services.

2. Written Determination.

A. The determination as to whether a procurement shall be made as a sole source shall be made by the Board and entered in its minutes. This determination shall be in writing and may specify the application of the determination and its duration. In cases of reasonable doubt, competition shall be solicited. Any request by the District that a procurement be restricted to one potential source shall be accompanied by an explanation as to why no other source will be suitable or acceptable to meet the need.

3. Negotiation in Sole Source Procurement.

A. The District Administrator shall conduct all negotiations with the sole source under this subpart, including, as appropriate, considerations of price, delivery, and other terms.

ARTICLE IV. EMERGENCY PROCUREMENT'S.

1. Application.

A. This section shall apply to every procurement of construction made under emergency conditions that will not permit other source selection methods to be used.

2.. Definition of Emergency Conditions.

A. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, natural disasters, wars, destruction of property, building or equipment failures, or any emergency proclaimed by governmental authorities.

3. Scope of Emergency Procurement's.

A. Emergency procurement's shall be limited to only those construction items necessary to meet the emergency.

4. Authority to Make Emergency Procurement's.

A. The Board makes emergency procurement's of construction when, in the Board's determination, an emergency condition exists or will exist and the need cannot be met through normal procurement methods.

B. Competitive sealed bidding is unsuccessful when all bids received pursuant to an invitation for bids are non-responsive, unreasonable, non-competitive, or the low bid exceeds available funds as certified by the District's Administrator, and time or other circumstances will not permit the delay required to re-solicit competitive sealed bids. If emergency conditions exist after or are brought about procurement may be made.

5. Source Selection Methods.

A. The source selection method used for emergency procurement shall be selected by the Board of Trustees' with a view to assuring that the required services of construction items are procured in time to meet the emergency. Given this constraint, as much competition as the Board of Trustees' determines to be practical shall be obtained.

6. Specifications.

A. The Board of Trustees' may use any available specifications without regard to the requirements of any other rule.

7. Required Construction Contract Clauses.

A. The Board of Trustees' may determine to modify or not use the construction contract clauses otherwise required.

8. Written Determination.

A. The Board of Trustees' shall make a written determination stating the basis for each emergency procurement and for the selection of the particular source. This determination shall be included in the Board of Trustees' minutes.

ARTICLE V. BID SECURITY, PERFORMANCE AND PAYMENT BONDS

1. Application.

A. This rule shall govern bonding and bid security requirements for the award of construction contracts by the district in excess of \$50,000; although acceptable bid security and performance and payment bonds may be required on any construction contract regardless of size. Bidding documents shall state whether acceptable bid security, performance bonds or payment bonds are required.

2. Acceptable Bid Security.

A. Invitations for Bids on construction contracts shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

B. If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Board of Trustees' to be nonsubstantial. Failure to submit an acceptable bid security in connection with an invitation for bids shall be deemed nonsubstantial where only one bid is received, and there is not sufficient time to rebid the contract.

3. Payment and Performance Bonds.

A. Payment and performance bonds are required for all construction contracts in excess of \$50,000, in the amount of 100% of the contract price. These bonds shall cover the procuring agencies and be delivered by the contractor to the District at the same time the contract is executed. If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.

4. Forms of Bonds.

A. Bid bonds, payment bonds and performance bonds must be from sureties meeting the requirements of Subsection R23-1-40 (5) of the Utah Administrative code.

5. Surety firm requirements.

A. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies or an amount not less than the amount of the bond to be issued. A cosurety may be utilized to satisfy this requirement.

6. Waiver.

A. The Board of Trustees' may waive the bonding requirement in the Board of Trustees' finds, in writing, that bonds cannot be reasonable obtained for the work involved.

ARTICLE VI. GENERAL PROVISIONS.

1. Purpose.

A. The purpose of a specification is to serve as a basis for obtaining a supply or construction item adequate and suitable for the District's needs and the requirements of the project, in a cost-effective manner, taking into account, the costs of ownership and operation as well as initial acquisition costs. Specifications shall permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the District's requirements.

2. Preference for Commercially Available Products.

A. Recognized, commercially available products shall be procured wherever practicable. In developing specifications, accepted commercial standards shall be used and unique products shall be avoided, to the extent practicable.

3. Non-restrictiveness Requirements.

A. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, or construction item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written

determination shall be made that it is not practicable to use a less restrictive specification.

4. District Administrator's Responsibilities.

A. The District Administrator is responsible for the preparation of all specifications required by the Board of Trustees' which shall be done in consultation with the District Chief.

B. The District may enter into contracts with others to prepare construction specifications when there will not be a substantial conflict of interest. The Board of Trustees' shall retain the authority to approve all specifications.

C. Whenever specifications are prepared by other than District personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of this section.

5. Types of Specifications.

A. The District Administrator may use any method of specifying construction items which he or she determines is the best interest of the District including the following:

(1) By performance specification stating the results to be achieved with the contractor choosing the means.

(2) By a prescriptive specification describing a means for achieving desired, but normally unstated, ends. Prescriptive specifications include the following:

(a) Descriptive specifications, providing a detailed written description of the required properties of a product and the workmanship required to fabricate, erect and install without using trade names; or

(b) Proprietary specifications, identifying the desired product by using manufacturers, brand names, model or type designation or important characteristics. This further divided into four classes:

(i) Base bid, where a rigid standard is specified and there are no allowed substitutions due to the nature of the conditions to be met. This may only be used when very restrictive standards are to be met and there are only definite proprietary products known that will meet the rigid

standards needed; and

(ii) Or equal, which allows substitutions if properly approved; or

(iii) By a reference standard specification where documents or publications are included in the specification by reference as though included in their entirety;

(iv) By a nonrestrictive specification which may describe elements of prescriptive or performance specifications, or both, in order to describe the end result giving the contractor latitude in methods, materials, delivery, conditions, cost or other characteristics or considerations to be satisfied.

1. Procedures for the Development of Specifications.

A. Specifications may designate alternate supplies or construction items where two or more design, functional, or proprietary performance criteria will satisfactorily meet the procuring District's requirements.

B. The specification shall contain a nontechnical section to include any solicitation or contract term or condition such as a requirement for the time and place of bid opening, time of delivery, payment, liquidated damages, and similar contract matters.

2. Use of Proprietary Specifications.

A. The District Administrator shall seek to designate three brands as a standard reference and shall state that substantially equivalent products to those designated will be considered for award, with particular conditions of approval being described in the specification.

B. Unless the district Administrator determines that the essential characteristics of the brand names included in the proprietary specifications are commonly known in the industry or trade, proprietary specifications shall include a description of the particular design, functional, or performance characteristics which are required.

C. Where a proprietary specification is used in a solicitation, the solicitation shall contain explanatory language that the use of brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is

not intended to limit or restrict competition.

D. The District shall solicit sources to achieve whatever degree of competition is practicable.

ARTICLE VII. CONSTRUCTION CONTRACT CLAUSES.

1. Required Contract Clauses.

A. Pursuant to Section 63-56-40 (5) of the Utah Code, the District shall include these clauses in all construction contracts for more than \$50,000.

2. Revisions to Contract Clauses.

A. The clauses required by this section may be modified for use in any particular contract when, pursuant to Subsection 63-56-40 (5) of the Utah Code, the Board of Trustees' makes a written determination describing the circumstances justifying the variation or variations. Notice of any included in any invitation for bids or request for proposals.

ARTICLE VIII. ETHICS IN PUBLIC CONTRACTING

1. No person involved in making procurement decisions may have personal investments in any business entity which will create a substantial conflict between their private interests and their public duties. Any person involved in making procurement decisions is guilty of a felony if the person asks, receives, or offers to receive any emolument, gratuity, contribution, loan, or reward, or any promise thereof, either for the person's own use or the use or benefit of any other person or organization from any person or organization interested in selling to the District.

SECTION THREE. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the Board of Trustees' of the North Tooele County Fire Protection Service District.

Approved and Adopted this 15th date of November, 2001 by the Board of Trustees' of the North Tooele County Fire Protection Service District.