

SOUTH BURLINGTON SCHOOL DISTRICT

Prevention of Conflict of Interest in Procurement

It is the intent of the South Burlington School District that all purchasing and contracting comply with state and federal laws.

No employee, officer, or agent of the South Burlington School District may participate in the selection, award, or administration of a purchase or contract if that person has a real, perceived, or apparent conflict of interest. Any employee, officer or agent with a real, perceived or apparent conflict of interest shall notify the superintendent of the conflict and not participate in the selection, award, or administration of the purchase or contract at issue. Below are the written procedures for implementation.

A conflict of Interest arises if an employee, officer, agent, immediate family member, partner, or an organization which employs or is about to employ any of the parties indicated herein, has a direct or indirect financial or other interest in, or a tangible personal benefit from a vendor considered for a purchase or contract.

An employee will not solicit or accept any favor, gratuity, or anything of monetary value from such vendors which exceeds a \$25 value.

In the event of a violation, the district may take disciplinary action against the employee, officer or agent according to procedures in the South Burlington School District personnel manual and/or collective bargaining agreement(s).

Ethics in Purchasing for the South Burlington School District

Introduction

Many employees are involved, either directly or indirectly, in the purchasing of supplies, equipment, and services for the district. They work together with the Business Office to ensure that items necessary for the operation of our schools are received on time, at a reasonable price, and in an approved manner. This short report sets forth information about conflicts of interest, a code of ethics, the anti-kickback law, as well as, the procedures for purchasing and laws which apply. A brief training may be made available during this fiscal year for all who participate in this process if needed. This will be revisited on an ongoing basis in future fiscal years.

Conflict of Interest in Purchasing Policy

It is the District's policy to keep an employee's district and private interests separate and to safeguard the district and its employees from charges of favoritism in the acquisition of goods and services. There are several key factors which indicate that a conflict may occur, one of which is an employee-vendor relationship.

1. An employee – vendor relationship exists when these conditions occur:
2. An employee proposes to rent, sell, or provide goods or services to the district.
3. An employee owns or controls more than 10% interest in the vendor proposing #1 above.

4. A former employee, or a near relative or spouse of current employees, proposes to rent, sell or provide goods to the district.
5. A near relative or spouse of an employee owns more than 10% in the vendor who currently provides, or is being proposed to supply goods or services to the district.

If an employee-vendor relationship appears to exist, the department head must disclose it in advance of issuing a contract or purchase order to the Business Manager, who has the responsibility of managing the purchasing function for the District. The Business Manager has the authority to determine if the relationship is to be approved or denied, prior to entering into a contract or processing a purchase order.

Code of Ethics

It is important that district suppliers understand that the district expects employees who are involved in any aspect of purchasing goods and services for the district, to adhere to a purchasing code of ethics. The purpose of this code is to foster fair and ethical business practices while acting in the best interest of the South Burlington School District and the taxpayers who support it. It is one of the means necessary to safeguard the public's trust in the operation of the district. To accomplish this, here is the purchasing Code of Ethics. In purchasing for the district, it is essential that the Code of Ethics be practiced as follows:

- Obtain maximum value for each dollar spent
- Decline personal favors, gifts, and gratuities
- Grant all competitive suppliers fair and equal consideration
- Conduct business with potential and current suppliers in an atmosphere of good faith
- Demand honesty in sales representation
- Receive consent of the originator for use of proprietary ideas and designs
- Accord a prompt and courteous response to all who call on legitimate business
- Foster fair, ethical, and legal business practices
- Protect the district's interest by ensuring that suppliers honor all terms of their contracts

Anti-Kickback Policy

The federal Anti-Kickback Act of 1986 prohibits those involved in government contracting from offering, accepting, or attempting to accept inducement for favorable treatment in awarding contracts for materials, equipment, or services. It is defined as compensation of any kind directly or indirectly accepted by any staff member from a supplier, contractor, or subcontractor competing for business, for the purpose of influencing the award of a contract. Kickbacks can include money, fees, commissions, credits, and gifts or gratuities, all of which are illegal to accept.

Appendices

The rules of purchasing are subject to these guidelines and laws shown in the appendices which follow:

- Appendix #1 – The District’s purchasing procedure,
- Appendix #2 – The State of Vermont’s Open Bid Law,
- Appendix #3 – Federal Guidelines (anti-kickback law) and
- Appendix #4 – The District’s Asset Protection Policy (#2.7) entitled Asset

Protection. A summary of these practices and rules are found in appendices at the end of this report. The key topic of this report is the establishment and training in the Conflicts of Interest Policy of Purchasing, which is required in Detail Policy #5 of this policy. It is meant to be a concise statement of ethics involved and expected when conducting business for the district.

Date Adopted: April 28, 2015

Date Revised: November 29, 2016

Legal Reference(s): 2 CFR 200.318

NOTE: This policy satisfies the federal regulatory requirement in 2 CFR 200.318. Alternatively, the district or supervisory union may fulfill this legal requirement by developing “written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.”

APPENDIX #1

**South Burlington School District
Procedures - Purchasing**

1. Any purchase order and/or commitment of funds by the District will be done through Purchase Orders (PO's) or contracts. All purchase orders shall be entered into the computer accounting system and approved before a purchase is made. If an order is placed over the telephone, the purchase order must still be approved ahead of time.
2. Purchase Orders will be approved by the building prior to being entered into the computer accounting system. Purchase Orders will be given final budget approval by the Business Manager or the Superintendent, and distributed by the Accounts Payable Clerk. Final budget approval will not be granted if a line item is over budget.
3. PO's shall be coded to the account code that most accurately describes the purpose intended, NOT to an account where there are remaining funds available.
4. Allow one week for the processing of PO's.
5. When goods have been received by the school, the receiving report and the original invoice shall be submitted to the Business Office for payment. The school employee responsibility for checking in the goods upon arrival must initial the invoice indicating that all goods were received and that they are in sound condition. When the employee accepts the shipment and indicates that all is in order, the District becomes liable for payment.
6. Under no circumstances shall an employee of the District accept any compensation or gifts from vendors in return for purchasing their products. If free gifts come as the result of a purchase, they belong to the District.
7. PO's which are funded via grants, must include the grant name on the PO. This facilitates the reconciliation of grant funds at year end.

Updated 7/28/15 – Also see the general information guide on the District website for more information about processing purchase orders.

APPENDIX #2

The State of Vermont's Open Bid Law

The Vermont Statutes: Title 16, Chapter 009, Subchapter 004, § 559. Public bids

(a) When the cost exceeds \$15,000.00. A school board or supervisory union board shall publicly advertise or invite three or more bids from persons deemed capable of providing items or services if costs are in excess of \$15,000.00 for any of the following:

- (1) the construction, purchase, lease, or improvement of any school building;
- (2) the purchase or lease of any item or items required for supply, equipment, maintenance, repair, or transportation of students; or
- (3) a contract for transportation, maintenance, or repair services.

(b) When a school construction contract exceeds \$500,000.00:

(1) The State Board shall establish, in consultation with the Commissioner of Buildings and General Services and with other knowledgeable sources, general rules for the prequalification of bidders on such a contract. The Department of Buildings and General Services, upon notice by the Secretary, shall provide to school boards undergoing construction projects suggestions and recommendations on bidders qualified to provide construction services.

(2) At least 60 days prior to the proposed bid opening on any construction contract to be awarded by a school board that exceeds \$500,000.00, the school board shall publicly advertise for contractors interested in bidding on the project. The advertisement shall indicate that the school board has established prequalification criteria that a contractor must meet, and shall invite any interested contractor to apply to the school board for prequalification. All interested contractors shall submit their qualifications to the school board, which shall determine a list of eligible prospective bidders based on the previously established criteria. At least 30 days prior to the proposed bid opening, the school board shall give written notice of the board's determination to each contractor that submitted qualifications. The school board shall consider all bids submitted by prequalified bidders meeting the deadline.

€ Contract award.

(1) A contract for any such item or service to be obtained pursuant to subsection (a) of this section shall be awarded to one of the three lowest responsible bids conforming to specifications, with consideration being given to quantities involved, time required for delivery, purpose for which required, competency and responsibility of bidder, and his or her ability to render satisfactory service. A board shall have the right to reject any or all bids.

(2) A contract for any property, construction, good or service to be obtained pursuant to subsection (b) of this section shall be awarded to the lowest responsible bid conforming to specifications. However, when considering the base contract amount and without considering cost overruns, if the two lowest responsible bids are within one percent of each other, the board may award the contract to either bidder. A board shall have the right to reject any bid found not to be responsible or conforming to specifications or to reject all bids.

(d) Construction management. The school board may contract for the service of construction management to assist in a school construction project. The State Board, in consultation with the Commissioner of Buildings and General Services and other knowledgeable sources, shall

adopt rules defining the term “construction management” and specifying the nature of bidding requirements under construction management services in order to assist school boards to comply with the public bidding requirements of this section.

€ Application of this section. Any contract entered into or purchase made in violation of the provisions of this section shall be void; provided, however, that:

- (1) the provisions of this section shall not apply to contracts for the purchase of books or other materials of instruction;
 - (2) a school board may name in the specifications and invitations for bids under this section the particular make, kind, or brand of article or articles to be purchased or contracted;
 - (3) nothing in this section shall apply to emergency repairs;
 - (4) nothing in this section shall be construed to prohibit a school board from awarding a school nutrition contract after using any method of bidding or requests for proposals permitted under federal law for award of the contract;
 - (5) nothing in this section shall prevent school districts or supervisory unions from entering into agreements with other school districts or supervisory unions to conduct joint bidding procedures otherwise consistent with this section;
 - (6) nothing in this section shall require a school board to invite or advertise for bids if it elects to purchase goods, materials, or supplies through the Commissioner of Buildings and General Services, pursuant to 29 V.S.A. chapter 49; and
 - (7) nothing in this section shall require a school board or supervisory union board to invite or advertise for bids if it is renewing a contract entered into pursuant to subsection (a) of this section provided that annual costs will not increase more than the most recent New England Economic Project Cumulative Price Index, as of November 15, for State and local government purchases of goods and services, the total amount of the contract does not exceed an increase of 30 percent more than the total amount of the original contract, and the contract for the renewal period allows termination by the board following an annual review of performance.
- (f) Waivers. The State Board shall by rule adopt standards governing the authority of the Secretary to grant individual waivers to the provisions of this section. The rules, at minimum, shall require the school board seeking the waiver to demonstrate to the Secretary that it is unable to comply with the bidding procedure through no fault of its own, and that it has proposed an alternative method of minimizing costs through a fair and public process.
- (g) Violations. The State Board may deny State aid for school construction and for debt service on a project that proceeds in violation of this section. (Added 1969, No. 298 (Adj. Sess.), § 36; amended 1971, No. 232 (Adj. Sess.), § 1, eff. April 5, 1972; 1989, No. 188 (Adj. Sess.), § 3; 1993, No. 233 (Adj. Sess.), § 75, eff. June 21, 1994; 1995, No. 185 (Adj. Sess.), § 86, eff. May 22, 1996; 1999, No. 77 (Adj. Sess.), § 1; 1999, No. 148 (Adj. Sess.), § 76, eff. May 24, 2000; 2003, No. 12, § 1; 2005, No. 54, § 3; 2007, No. 66, § 3;

Appendix #3

Anti-Kickback Act of 1986

The Anti-Kickback Act of 1986, 41 U.S.C. § 51 *et seq.*, modernized and closed the loopholes of previous statutes applying to government contractors. The 1986 law attempts to make the anti-kickback statute a more useful prosecutorial tool by expanding the definition of prohibited conduct and by making the statute applicable to a broader range of persons involved in government subcontracting. A summary of this act follows below:

Prohibited conduct – the Act prohibits attempted as well as completed “kickbacks,” which include any money, fees, commission, credit, gift, gratuity, thing of value, or compensation of any kind. The act also provides that the inclusion of kickback amounts in contract prices is prohibited conduct in itself.

Purpose – The Act requires that the purpose of the kickback was for improperly obtaining or rewarding favorable treatment. It is intended to embrace the full range of government contracting.

Covered class of “kickback” recipients – The Act prohibits “kickbacks” to prime contractors, prime contractor employees, subcontractors, and subcontractor employees. These terms are defined in the Act.

Type of contract – The Act defines kickbacks to include payments under any government contract.

Knowledge and willfulness – The Act requires one to knowingly and willfully engage in the prohibited conduct for the imposition of criminal sanctions.

The Federal Procurement Fraud Unit in the Fraud Section, Criminal Division, has sample indictments and will handle inquiries or questions about this statute and will provide guidance on a variety of procurement fraud issues.

APPENDIX #4

**South Burlington School District
Executive Limitations Monitoring Report**

April 28, 2015

2.7. Asset Protection (detail policy #5 excerpt)

The superintendent shall not cause or allow district assets to be unprotected, inadequately maintained, or unnecessarily risked.

Further, without limiting the scope of the foregoing by this enumeration, the superintendent shall not (Detail Policy #5) make any purchase (a) wherein normally prudent protection has not been given against conflict of interest; (b) of over \$15,000 without having obtained comparative prices and quality; (c) of over \$75,000 without a stringent method of ensuring the balance of long-term quality and cost. Orders shall not be split to avoid these criteria.

Superintendent's Interpretation

I interpret this to mean that the superintendent will ensure that employees approving purchases will receive training in identifying potential areas of conflict of interest of purchases. I interpret "comparative prices and quality" to mean that on purchases of items over \$15,000 and subject to the Vermont State bid law, the superintendent will ensure that the bid law is followed. I interpret "stringent method" to mean that purchases over \$75,000 will, through the bid process, have a documented review of factors appropriate to the purchase (such as safety, durability, longevity, maintenance requirements, and aesthetic value).

Prepared by John K. Stewart,
Business Manager
July 28, 2015