

# DISTRICT FINANCIAL SERVICES INSIGHTS

## 2017 Reminders

**IRS Rate:** The mileage rate for 2017 has decreased by one cent. The new rate is \$.535.

**Bid Limit:** The new bid limit for 2017 is \$88,300.

**Contract Updates Needed:** See October DFS Insights for 2017 changes. (Correction: AB 626 not 616)

## Accountable v Non-accountable Plans

### IRS Regulations for Reimbursable Expenses

#### Accountable Plans

To be an accountable plan, your employer's reimbursement or allowance arrangement must include all of the following rules:

1. Your expenses must have a business connection — that is, you must have paid or incurred deductible expenses while performing services as an employee of your employer.
2. You must adequately account to your employer for these expenses within a reasonable period of time.
3. You must return any excess reimbursement or allowance within a reasonable period of time.

**Reasonable Period:** Expenses are accounted for within 60 days of travel. Return any excess advance of funds within 120 days.

Not all expenses fall under an accountable plan. Any reimbursement for expenses that are not deductible must be treated as non-accountable and reported as income.

Examples of reimbursement to be reported as income:

1. Cell phone paid by employer when the phone is NOT used primarily for business.
2. Home-to-work mileage when traveling to primary work location.

Per Diem and Car Allowances:

Districts need to review their policies on per diem and allowance rates. District may not use a combination of an Accountable Plan and a Non-Accountable Plan.

Employees under an accountable plan must submit supporting documentation as if they were reporting to the IRS for purpose of an audit.

A per diem or car allowance satisfies the adequate accounting requirements for the amount of your expenses only if all the following conditions apply.

1. Your employer reasonably limits payments of your expenses to those that are **ordinary and necessary** in the conduct of the trade or business.
2. The allowance is similar in form to and **not more than the federal rate**.\*
3. You prove the time (dates), place, and business purpose of your expenses to your employer within a reasonable period of time.

If a district does not use reasonably accurate estimates of travel costs to set per diem rates, then the employee may be required to justify the costs to the IRS.

\*Any reimbursements in excess of the federal rate are accountable and need to be reported as income.

#### Non-Accountable Plans

Reimbursements are treated as income and reported on your W-2. Employees will be required to complete an itemized tax return. Meal and entertainment expenses will be subject to the 50% limit and total expenses will be subject to the 2%-of-adjusted-gross-income limit that applies to most miscellaneous itemized deductions.

See IRS Publication 463 for detailed guidelines: [https://www.irs.gov/publications/p463/ch06.html#en\\_US\\_2015\\_publink100034148](https://www.irs.gov/publications/p463/ch06.html#en_US_2015_publink100034148)

## Responsive v. Responsible

### Avoiding Litigation through Proper Determination

Since we are coming up on bidding season, it is a good time for a reminder of what falls under Responsive and Responsible when determining validity of a bid to avoid ending up being named in a case like Great West Contractors vs. Irvine Unified School District.

*Responsiveness:*

A bidder has met all the conditions of the bid as explained in the instructions to bidders.

Responsiveness can be determined without outside investigation or information. The fault appears on the bid itself. For example:

- Failure to sign the bid
- Failure to include a certification

A district may waive an irregularity in a bid, such as the failure to sign, as long as the error is not material (does not change the cost of the bid or give a material advantage to the bidder).

*Responsibility:*

Responsibility goes to trustworthiness, quality, fitness, capacity and experience to satisfactorily perform the contract.

Responsibility is about the bidder and not the bid.

In the Great West case, the district made a finding of non-responsiveness following notification of a licensing issue by a competing bidder. The court found that the item in question was a responsibility issue and due process was required.

The court noted five factors used in determining whether an issue was one of responsiveness or responsibility:

1. The complexity of the problem and the need for subtle administrative judgment. (Responsiveness determinations are not a matter of discretion).

The need for information received outside the bidding process. (Responsiveness does not usually require such information).

2. Whether the issue requires evaluation on a case by case basis (responsibility) or is subject to hard and fast rules (responsiveness).
3. The potential for adverse impact on the bidder's reputation (responsibility).
4. The potential that innocent bidders will be erroneously or arbitrarily disqualified (responsibility).

*Determining Responsibility Prior to Bidding*

Public Contract Code 20111.5 authorizes the use of a prequalification process for contracts under Section 20111. (Note: This section specifies public works. Consult your legal counsel if using a prequalification process for other service agreements requiring award to the lowest responsive and responsible bidder especially when using an RFP process.)

Prequalification allows a district to require prospective bidders to complete a standardized questionnaire and submit financial statements to determine whether a bidder is eligible to bid.

*Due Process*

Due process includes:

1. Notifying that bidder of any evidence reflecting upon the bidder's responsibility received from others or adduced as a result of independent investigation.
2. Affording the bidder an opportunity to rebut such adverse evidence.
3. Permitting the bidder to present evidence of qualification. (City of Inglewood—L.A. County Civic Center Authority v. Superior Court (1972) 7 Cal.3d 861, 871.)

**IMPORTANT / UPCOMING DATES AND DEADLINES**

**IMPORTANT DATES**

- Jan. 10, 2017 P-1 Attendance due
- Jan. 31, 2017 1099 Electronic files due to IRS

**WORKSHOPS**

- Feb. 7, 2016 Corrected W-2 Workshop

**FUTURE DEADLINES - PROP 39:**

- June 30, 2018 LEA's final encumbrance
- August 1, 2018 Final Expenditure Plan Submission
- June 30, 2020 Final date all projects must be complete