

# Processing and Evaluating Bids

*How to Navigate the Procurement Selection Process*

*Michigan School Business Officials  
2026 Annual Conference  
Session 192*

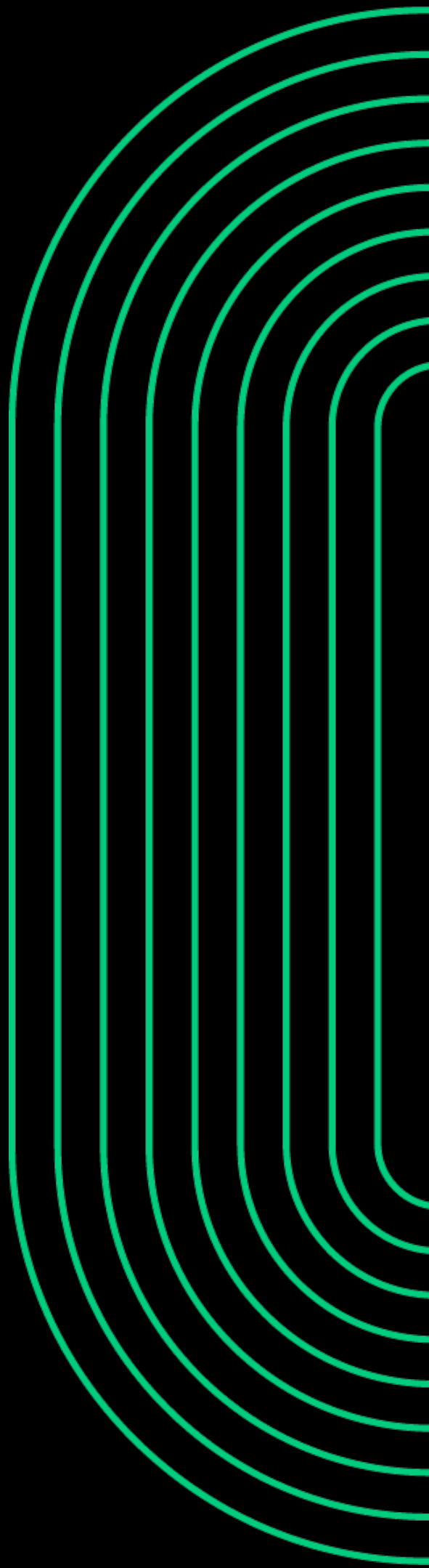
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**Legal Framework for Procurements**



**Overview of Procurement Process**



**Proposal/Bid Analysis**



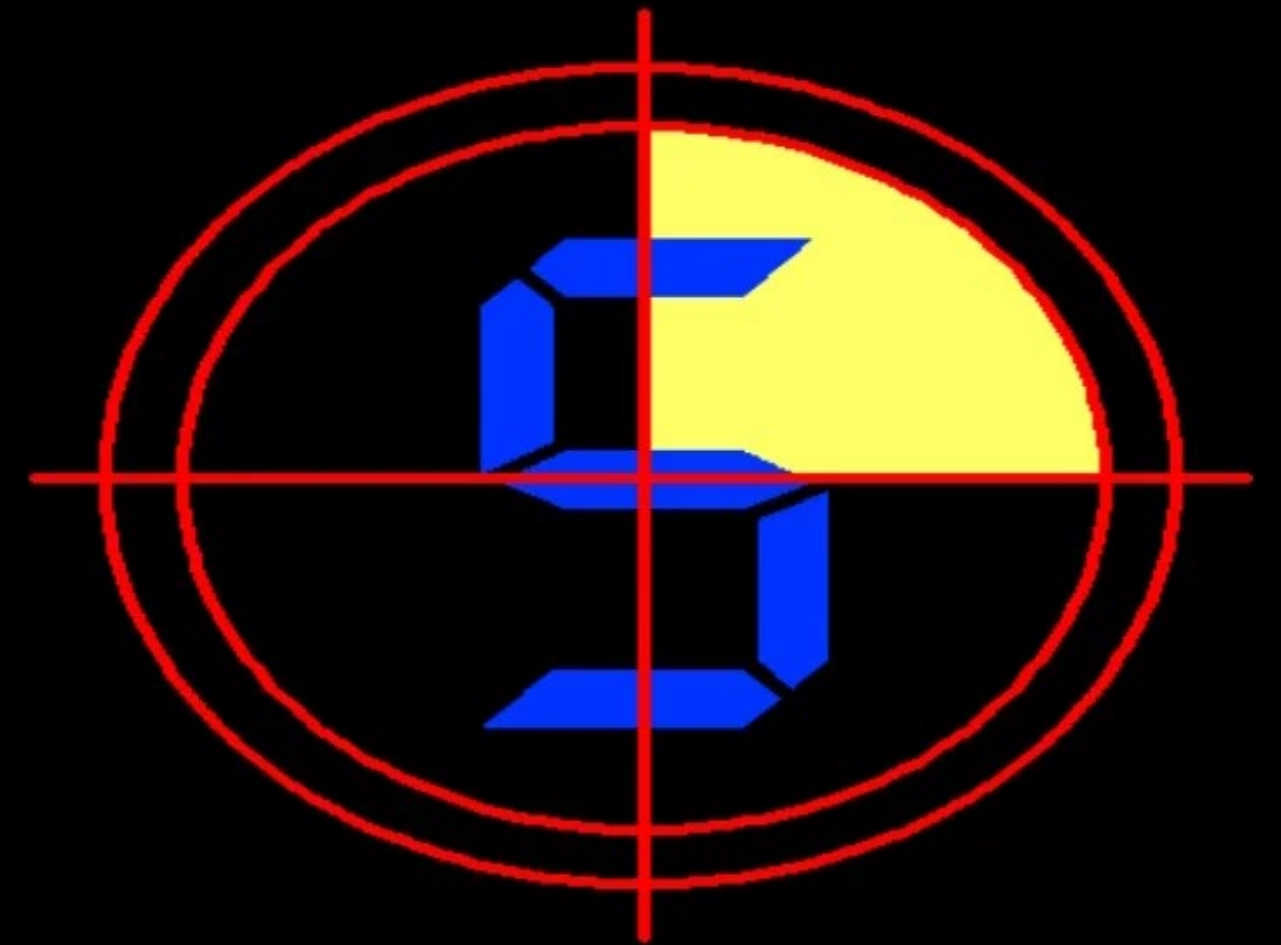
**Accepting & Rejecting Proposals/Bids**



**Challenges & Bid Protests**



Are you Ready?



## *Today's Learning Objectives*

- 1. Identify and Understand the Legal Drivers Behind Procurements.**
- 2. Develop RFPs to avoid problematic issues**
- 3. Understand Key Issues in Evaluation**
- 4. Best Practices in Accepting & Rejecting Proposals/Bids**
- 5. Key Issues in Challenges & Bid Protests**

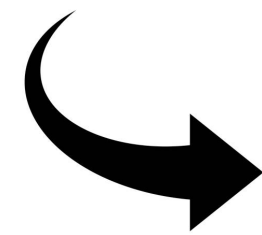
# Legal Framework for Procurements



# General Procurement Powers

## The Broad Powers under the Revised School Code – MCL 380.11a

- ❖ General Powers School Districts
- ❖ School districts have **express powers** and may exercise those **powers that are implied or incidental to those express powers**.
- ❖ School districts may also exercise a power incidental or appropriate to the performance of any function related to the operation of the school district **in the interest of public elementary and secondary education within the school district**.



**“Educational Nexus”**

- ❖ Express Powers for Procurements and Contracting:
  - MCL 380.11a(3)(c) – “**Acquiring, constructing**, maintaining, repairing, renovating, disposing of, or conveying **school property, facilities, equipment, technology, or furnishings**.”
  - MCL 380.11a(4) – “A general powers school district may enter into **agreements or cooperative arrangements** with other entities, public or private, or join organizations as part of performing the functions of the school district.”

# Supplies/Materials/Equipment – Bidding Issues

## Procurement of Supplies, Materials and Equipment – MCL 380.1274

- ❖ Requires Board to adopt **written policies** governing the **procurement of supplies, materials and equipment**. However, there are no specific requirements as to the contents of these Section 1274 purchasing policies under State law.
- ❖ Also requires that the school district: **(1) obtain competitive bids** for the **purchase of any item or group of items** in a single transaction costing **\$31,321 (\*SY25-26)** or more; and **(2) have school board must approve purchase**.
- ❖ Statutory Exceptions to above competitive bidding rule:
  - Purchases to State cooperative bulk purchasing program.
  - Purchases of **food** in a single transaction costing \$100,000 or less.
- ❖ Michigan-based business preference
  - Optional and Requires additional “local policy”
  - Based upon primary contractor or 1 or more subcontractors or primary contractor
  - Cannot be used if paid with federal funds
  - “Michigan-based Business” definition
- ❖ No advertising or public bid opening required by State law (but check Board Policy) but must consider Federal regulations if purchase funded via Federal funds.



# Construction Projects

## Construction and Repair of School Buildings – MCL 380.1267

- ❖ Before commencing **construction** of new school building, or **addition** to or **repair** or **renovation** of an existing school building, **except repairs in emergency situations**, the school district shall obtain **competitive bids** on all **material and labor** to complete construction costing **\$31,321 (\*SY25-26)** or more.
- ❖ Specific Requirements for Bidding Procedures:
  - **Advertise once** in **local newspaper**
  - **Post** advertisement on **State website** for at least **2 weeks**
  - Advertisement must specify:
    - Date and Time bids are **due**
    - School district will not accept or consider **late bids**
    - Date, time and place where bids will be **opened and read aloud**
    - Each bid shall be accompanied by **sworn and notarized familial affidavit**
    - Will not accept bid that does not include sworn and notarized familial affidavit
  - A **Bid Bond** (5% of bid amount) is required
- ❖ Reservation of Rights for 1267(5)(late bids) & 1267(6)(reject all and re-bid)
- ❖ Michigan-based Business Preference (same requirements as Section 1274)



# Construction Projects

## Energy Conservation Projects - MCL 380.1274a

- ❖ Projects include, but not limited to: building envelope improvements; heating & cooling; equipment upgrades; lighting retrofits; energy management systems; etc.
- ❖ Energy conservation improvements or substance removal or treatment authorized by this section is **subject to the competitive bidding requirements of section 1267**.

## Contractor's Bond for Public Buildings and Works Act – MCL 129.201 et seq.

- ❖ Monetary Threshold for Applicability - **\$50,000** ("Contract Amount")
- ❖ Requirement for **Performance Bond**
  - Protects Owner if Contractor does not perform
  - Must be **at least 25%** of Contract Amount
- ❖ Requirement of **Payment Bond**
  - Protects materialmen/suppliers and subcontractors against non-payment by contractor since lien on public property is prohibited.
  - Must be **at least 25%** of Contract Amount
  - Surety must be licensed in Michigan

***Performance and Payment Bonds are required for all School Construction procurements in excess of the \$50,000 threshold, but school districts may require performance and/or payment bonds in other types of procurements/contracts.***



# Design-Build In School Construction

School districts now have the [option](#) to utilize the design-build construction method for school building construction projects when specific requirements are met.

## Key Requirements to Comply with Design-Build Amendments to School Building Construction Act:

- ❖ **Design-Criteria Developer:** Must first engage an independent **design-criteria developer**, which must be a Michigan-licensed architect or professional engineer not employed by the design-builder, to prepare the appropriate design-criteria package to be used by a school district to obtain proposals from design-builders for the desired construction project.
- ❖ **Design-Build Team:** Must then seek proposals from **design-builders** and **design-build teams** to furnish the design and construction services for the construction project within the parameters of the design-criteria package.
- ❖ **Lump Sum vs GMP.** With the assistance of its design-criteria developer, a school district will need to decide whether to initially seek proposals from the design-builder/design-build team for an “all in” lump price for the entire project (“Lump Sum”), or a lump sum proposal for only the design fee plus a construction management fee based on a percent of cost method (“Cost Plus Fee”).
- ❖ **Competitive Bidding.** When seeking proposals under the design-build method (on a Lump Sum or Cost Plus Fee with GMP basis), competitive bidding requirements under **Section 1267** of the Revised School Code, MCL 380.1267 need to be followed.
- ❖ **Single-Phase Selection.** With the assistance of a school district’s design-criteria developer, must award the project to a design-builder/design-build team based on **price and qualification** to determine the best value in a single procurement process.
- ❖ **Oversight.** May continue to engage its independent design-criteria developer throughout the construction project to assist a school district with oversight of the design-build project, as well as provide construction inspection services of project.

***If a design-build construction delivery method is not utilized, school districts must still follow the current independent design and construction process under the School Building Construction Act.***



# Michigan State Prevailing Wage Laws

## Key Requirements to Comply with Act (Michigan Public Act 10 of 2023 - MCL 408.1101 et seq.)

- ❖ Contracting Agent, **before advertising for bids**, **must request the prevailing wages and benefits** for all classes of Construction Mechanics for the project **from the Department of Labor and Economic Opportunity** (“LEO”).
- ❖ Must **include the prevailing wages and benefits schedule** in the specifications for the work and on the bidding forms.
- ❖ If do not award the contract or begin construction **within 90 days** of the date of the State provided schedule of prevailing rates of wages and fringe benefits, must contact the State to receive a redetermination before the contract is awarded.
- ❖ Must **include** express **contract provisions**, such as:
  - The project is subject to, and contractor shall pay prevailing wages and fringe benefits to all of its construction mechanics (including subcontractors) working on the project in accordance with, Michigan Public Act 10 of 2023.
  - Require **posting** of the prevailing wages and benefits **at project site**.
  - Construction mechanics are **intended beneficiaries** of the contractual prevailing wage, fringe benefit, and nondiscrimination nonretaliation requirements may bring an action in a court against the contractor or subcontractor for damages or injunctive relief and may be awarded reinstatement, damages, actual costs and attorney fees.
  - Must require contractors provide Contracting Agent the **certified payroll records** and other records required by act and **maintain** those for a period of **3 years**.
  - Permit the contracting agent and commissioner to inspect all records and other actions reasonably required to enforce act.
  - Contracting agent may, by written notice to the contractor and the sureties of the contractor known to contacting agent, terminate the contractor's right to proceed with work if prevailing wage and/or fringe benefits have not been paid, and may proceed to complete the contract by separate agreement, and the original contractor and the original contractor's sureties shall be liable to the contracting agent for any excess costs occasioned thereby.



# Michigan State Prevailing Wage Laws

## Contractor Registration

- ❖ The Act was amended via PA 110 of 2024, and effective April 2, 2025:
  - A contractor shall neither submit a bid nor perform work on a state project unless the contractor is registered with LEO.
  - A contractor shall neither list a subcontractor on a bid nor enter into an agreement with a subcontractor unless the subcontractor is registered with LEO.
  - A subcontractor shall neither enter into a contract with a contractor nor perform work on a state project unless the subcontractor is registered with LEO.
  - A contractor shall include a copy of its State registration and the State registration for each subcontractor in its bid.
- ❖ All contractors and subcontractors must register with the State (Department of Labor and Economic Growth – LEO) by submitting an application and pay the requisite \$500 fee in the proscribed form and manner to LEO.

## Payroll Records

- ❖ Not later than 10 days after end of pay period, a contractor or subcontractor must submit the certified payroll records to the LEO database (this process became effective April 1, 2026).
- ❖ LEO Website has link to Online Certified Payroll Submission.

**[LEO Website](https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/prevailing-wage)**

<https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/prevailing-wage>



# Procurement of Services

- ❖ No express legal requirement under State law to seek competitive bids for **services**.
  - However, Board Policy may be more stringent than the law and require bidding of services under certain situations.
- ❖ Under Federal law, if federal funding used to pay or support services (e.g., Federal grant funds & Food Service Contracts) competitive bidding may be required depending upon dollar amount of services.
- ❖ What Effect does PERA Reform Legislation have on Privatization/Outsourcing of Non-Instructional Services?
  - Went into effect February 13, 2024.
  - Removal from Prohibited Subjects.
  - Restriction on Use of Intergovernmental Agreements.
  - Check union contract language regarding ability to outsource/privatize.
  - What are effects if not exclusive bargaining unit work?
  - Permissive Subject but could be Mandatory Subject.
  - Implementing through bargaining to Impasse.

# Federal Regulations - Procurements

## *When is competitive bidding required?*

- ❖ School districts must have and use documented **procurement procedures**, consistent with State, local, and the applicable federal regulations of the UGG.
- ❖ Under State law (and local policy) bidding threshold is **\$31,321** (FY 25-26).
- ❖ Under Federal law:
  - Under the **Micro Purchases Threshold (\$15,000)** (MPT) – No required informal or competitive process.
  - Over MPT but Below **Simplified Acquisition Threshold (\$350,000)** (SAT) – Requires **quotes from adequate number of qualified sources**.
  - If over SAT, **Formal Competitive Bidding** – Requires sealed bids/proposals.
  - Must ensure objective contractor performance and eliminate unfair competitive advantage.
- ❖ In very limited circumstances, **Non-competitive Procurements** may be allowed.
  - Acquisition of property or services, the aggregate dollar amount of which does not exceed the MPT.
  - The item is available only from a single source.
  - Emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation.
  - After solicitation of a number of sources, competition is determined inadequate.



# Federal Regulations - Procurements

## *What is required under the Uniform Grant Guidance (UGG)?*

- ❖ School district **must maintain records** sufficient to detail the history of procurement, including:
  - Rationale for the method of procurement.
  - Selection of contract type and basis for contract price.
  - Contractor selection or rejection.
- ❖ Must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement (**lowest responsible bidder**). Cannot award to **debarred** contractors.
- ❖ All procurement transactions must be conducted in a manner providing **full and open competition** to engage responsible contractors with ability to perform successfully.
- ❖ A **Contractor that develops or drafts** invitation for bids or request for proposals **must be excluded** from competing for such procurements.
- ❖ Must **not preclude potential bidders** or place unreasonable requirements on contractors to qualify to do work.
- ❖ Geographic **preferences** are not allowed (i.e., Michigan-based preference).



# Federal Contracting Requirements

## *What provisions must be in the contract and when?*

- ❖ Depending on type and value of contract, various provisions must be included in the contract.
  - Contracts for more than the SAT must address administrative, contractual, or legal remedies in instances where contractors violate or **breach contract terms**, and provide for such sanctions and penalties as appropriate.
  - All contracts in excess of \$10,000 must address **termination for cause and for convenience by the school district**, including the manner by which it will be effected and the basis for settlements.
  - All construction contracts must include the **equal employment opportunity clause**.
  - All construction contracts in excess of **\$2,000** must requirement **FEDERAL PREVAILING WAGES** be paid and require documentation of compliance.
  - All contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provisions relating to “**Wage and Hour**” and payment of overtime.
  - Contracts in excess of \$150,000 must contain a provision that requires the contractor to comply with all applicable standards, orders or regulations under the **Clean Air Act and the Federal Water Pollution Control Act**.
  - Contracts exceeding \$100,000 must require contractors to certify compliance with the Byrd Anti-Lobbying Amendment.
  - All construction or facility improvement contracts exceeding the SAT must require a **bid bond** (5%) and **performance and payment bonds** (100%).

# Iran Sanctions Certifications

## Iran Economic Sanctions Act - MCL 129.311 et seq.

- ❖ An Iran linked business is not eligible to submit a bid on ANY request for proposal with a Public Entity.
- ❖ A Public Entity shall require a person that submits a bid on ANY request for proposal with the public entity to certify that it is not an Iran linked business.
- ❖ If Public Entity determines that certification is false, must give written notice to bidder of such determination and intent to not enter into, or renew, the contract.
- ❖ Bidder has 90 days to demonstrate certification was not false, and if not done, Public Entity may terminate contract and shall report bidder to State Attorney General.
- ❖ Civil penalty against bidder for non-compliance is the greater of \$250,000 or 2 times the amount of contract AND is ineligible to bid on any request for proposal for 3 years from the date of the Public Entity's determination of false certification.
- ❖ "Public Entity" definition includes a school district and an intermediate school district, and implicitly a public school academy.

**BEST PRACTICE - obtain certification by requiring an affidavit in RFP documents that bidder must complete and include/submit as part of its proposal.**



# Consequences for Violating the Law

## ❖ Violation of Revised School Code (MCL 380.1804)

If a person **neglects or refuses** to do or perform an act required by the [Revised School Code], or **who violates or knowingly permits or consents to a violation** of the [Revised School Code], **Guilty of a misdemeanor** punishable by a **fine not more than \$500.00**, or **imprisonment for not more than 3 months**

## ❖ Violation of Competitive Bidding for Construction (MCL 380.1815)

If a person **knowingly or intentionally violates or permits or consents to the violation of** the competitive bidding requirements of Section 1267, **Guilty of a misdemeanor** punishable by a **fine** in an amount equal to not more than **10% of the cost of the project** involved in the violation or **imprisonment** for not more than **1 year, or both**.

## ❖ Prevailing Wage Laws

Liability to third-parties for damages and subject to lawsuits.



# Mandatory vs. Non-Mandatory Items

The following chart is a summary of the general legal requirements for procurements exceeding the applicable monetary threshold.

Supplies/Equipment	Construction	Services
Comply with District Policy	Advertisement in Newspaper	Iran Linked Business Affidavit
Do NOT split purchases	Post on SIGMA VSS/MILogin	Potential Bidding Obligations
Iran Linked Business Affidavit	Bid Bond	Familial Disclosure Affidavit
Familial Disclosure Affidavit	Performance and Payment Bonds*	Bid Bond
Bid Bond	Familial Disclosure Affidavit	Performance Bond
Performance Bond	Iran Linked Business Affidavit	Food Service – MDE Process*
Board Approval	Board Approval	Board Approval
	Possible Prevailing Wages	

**KEY: Mandatory / Optional but Best Practice / Wholly Optional**

Also, remember funding source may require additional compliance (e.g., Federal Prevailing Wage)



# Any Questions?



# 10 Minute Break!



# Overview of Procurement Process



# To Bid or Not To Bid...

## ❖ Considerations for bidding even if not required by law or policy:

- Multiple players in marketplace
- Cost reductions
- Large contract size/value
- No cooperative contracts applicable/available
- Desire to set long-term pricing

## ❖ Advantages to using competitive bidding even when not required:

- Save time and money by securing pricing once
- Have prices and preferred vendor(s) in place
- Secure best possible prices and terms and conditions for school district
- Vet vendor/contractor in advance
- Transparency



# Timing for the RFP Process

## ❖ General Considerations

- When must construction/services start?
- When is supply/equipment needed?
- What review/approval process is required by Board of Education?
- What contractor vetting process will be used?
- How long should RFP be “on the street?”

## ❖ Supplies/Materials/Equipment

- Purchase at the right time.

## ❖ Construction

- Design (and local consultation) and State Approval Process.
- Lead time contractors need to secure construction components.

## ❖ Services

- Architects vs. Construction Managers vs. Custodial vs. Transportation
- How long do service contractors need to implement services?



# Designing the Solicitation Documents

## ❖ **Compile a Team**

- Administrators/Staff
- Experts (beware of using vendors)
- Legal Counsel
- End-Users

## ❖ **Team Members Key for Creating Necessary Specifications**

- Understanding what product/service is needed
- Create proper specifications that will solicit responsive proposals/bids
- Include any variations or options of the product/service that is desired
- Consider Unit Pricing Options (for construction or supplies/equipment or services)

## ❖ **Determine Proper Procurement Vehicle**

- Review applicable laws
- Review School District policy/procedures
- RFP vs. Quotes vs. Cooperatives

## ❖ **Address Proper Contracting Issues**

- What contract provisions are required?
- What type of contract is best suited for procurement



# Designing the Solicitation Documents

- ❖ **DO NOT** simply cut and paste from other solicitation documents!!!!
  
- ❖ Key RFP Components generally include:
  - The “**Front-End**” of the RFP
    - ✓ The “rules” for the procurement process.
    - ✓ Pre-Bid/Proposal Meeting and subsequent Q&A from prospective contractors.
    - ✓ Identify background or supplemental information that must be included in the bid/proposal (references, etc.).
    - ✓ Require any **exceptions** to be clearly set forth in bid/proposal
    - ✓ Include Reservation of Rights in favor of school district:
      - Right to accept or reject any or all bids in whole or in part
      - Right to waive irregularities or informalities (cannot waive legal requirement though)
      - Right to award contract to other than lowest bidder
    - ✓ How and when bids/proposals are due.
  
  - The “**Specifications**” of the RFP
    - ✓ Specify solicitation/RFP and bidder's bid/proposal will be **incorporated into contract**
    - ✓ If unique item/product, include “or **substantial equivalent**” language
    - ✓ If services, clearly define **scope of services**
    - ✓ If equipment or technology, address delivery, installation, maintenance and warranties



# Designing the Solicitation Documents

❖ Key RFP Components generally include:

- The “**Pricing Parameters**” of the RFP
  - ✓ Fixed Pricing.
  - ✓ Not-to-Exceed Pricing.
  - ✓ Unit Pricing.
  - ✓ Pass-through costs/expenses.
  - ✓ Include specific variables of pricing that allow for adjustments as changes occur.
  - ✓ How long is pricing valid?
  - ✓ Alternates
- The “**Contract Terms**” of the RFP
  - ✓ Carefully review proposed contract terms (engage legal counsel)
  - ✓ Contract vs. Purchase Orders
  - ✓ Incorporate RFP and Proposal by reference or will lose protections.
  - ✓ Advise that school district **include a form of contract in the RFP.**
  - ✓ Advise that school district **DOES NOT simply use existing or old contract**



# Legal Issues in Managing the Procurement

## ❖ Managing the Overall **Timeframe** and Due Date

- Time to develop RFP (include any necessary approval timing)
- Time RFP should (or must) be “on the street”
- Beware of timing when changing DUE DATE for bids/proposals at last minute

## ❖ Maintain a **consistent process**. Treat all bidders fair and equal

## ❖ Consider a “**pre-bid**” meeting for complex procurements

## ❖ How to **Document** the Process:

- Sign-In Sheets
- Maintain Minutes from meetings if have Q&A sessions.

## ❖ Have a defined process for Requests for **Clarifications** and Responses

- Make all information available to all bidders even if they did not submit Request for Clarification
- Maintain record of all Requests for Clarifications

## ❖ Issue **Addenda** when necessary



# Any Questions?

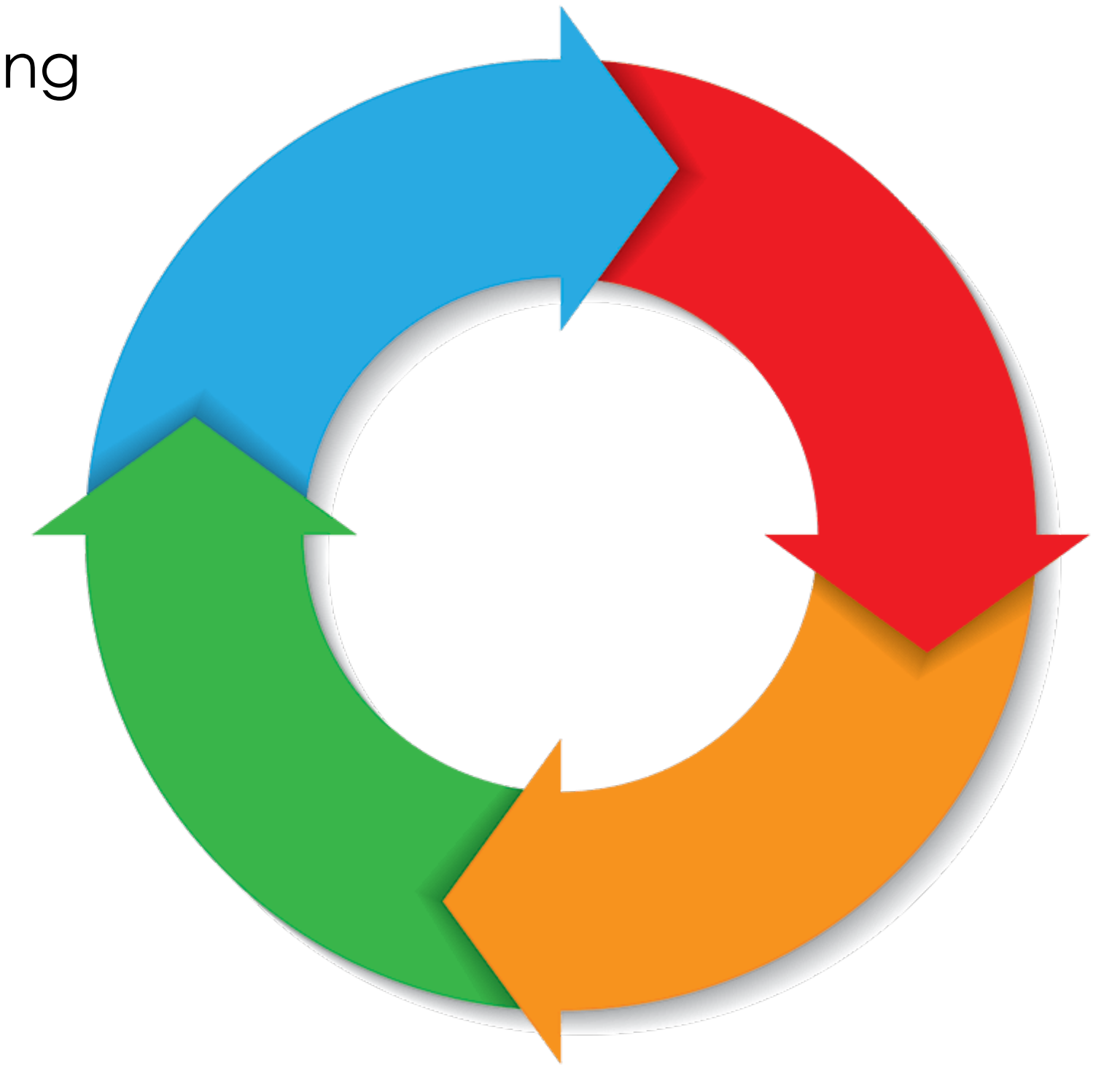


# Proposal/Bid Analysis



# Legal Issues in Proposal/Bid Intake

- ❖ Time-stamp all proposals/bids
- ❖ Store in secure location until opening
- ❖ Do not accept **late proposals** (return unopened)
- ❖ Proposal/Bid Opening
  - Best Practice is to have two school district representatives handle opening
  - If public opening, **read appropriate pricing** categories aloud
- ❖ Required Forms/Documents
  - Pricing Form(s)
  - Affidavits
  - Bonds & Insurance
- ❖ Pricing Form Issues
  - Filled out incorrectly.
  - Mandatory vs. Voluntary Alternates.



# Legal Issues in Proposal/Bid Intake

## ❖ Waivers and Reservation of Rights

- Which of the following can you legally waive?
  - Bid Bond
  - Familial Disclosure Affidavit
  - Iran Sanctions Affidavit
  - RFP Requirement
- Be consistent in application of waivers.

## ❖ What should we do if information/documents cannot be located in proposal?

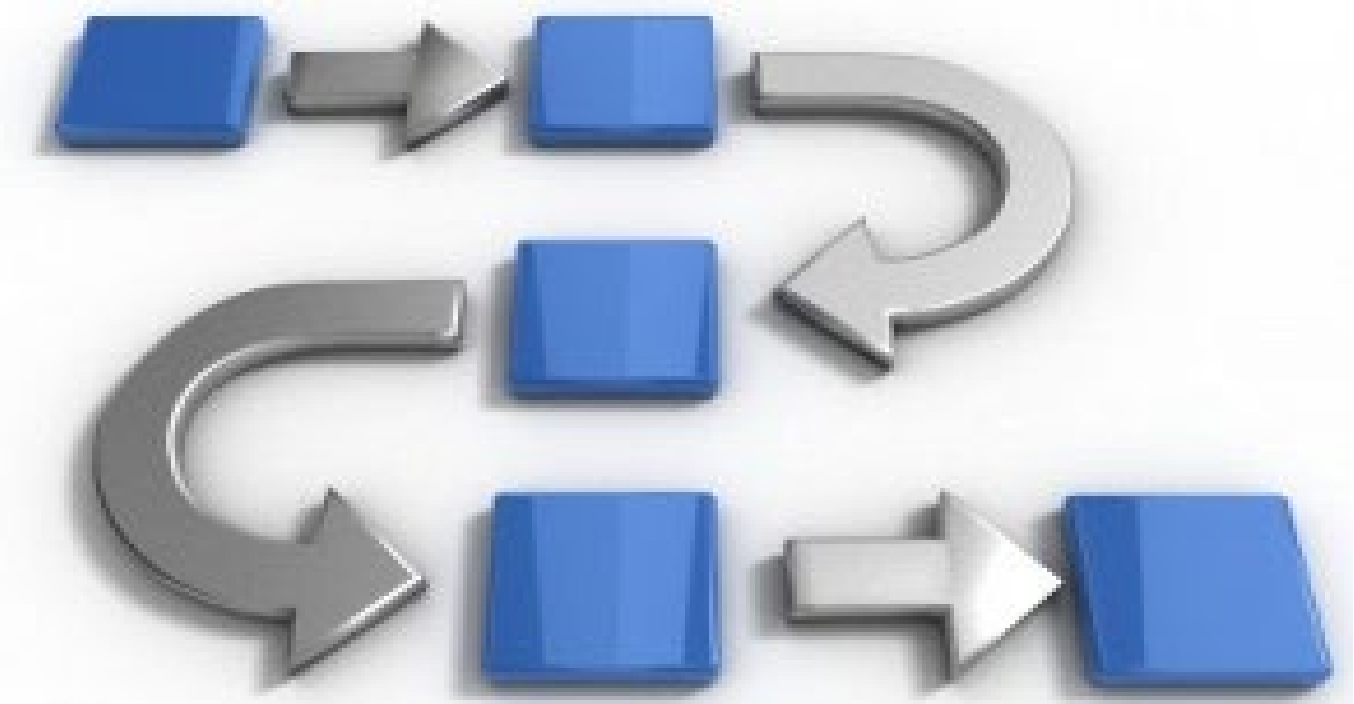
- Beware of **disqualifying bidder** during bid opening.

## ❖ Documentation:

- Use of Tally Sheets?
- Beware of FOIA Issues

## ❖ Electronic Bidding Issues:

- Electronic Bids and Submission
- Virtual Bid Openings



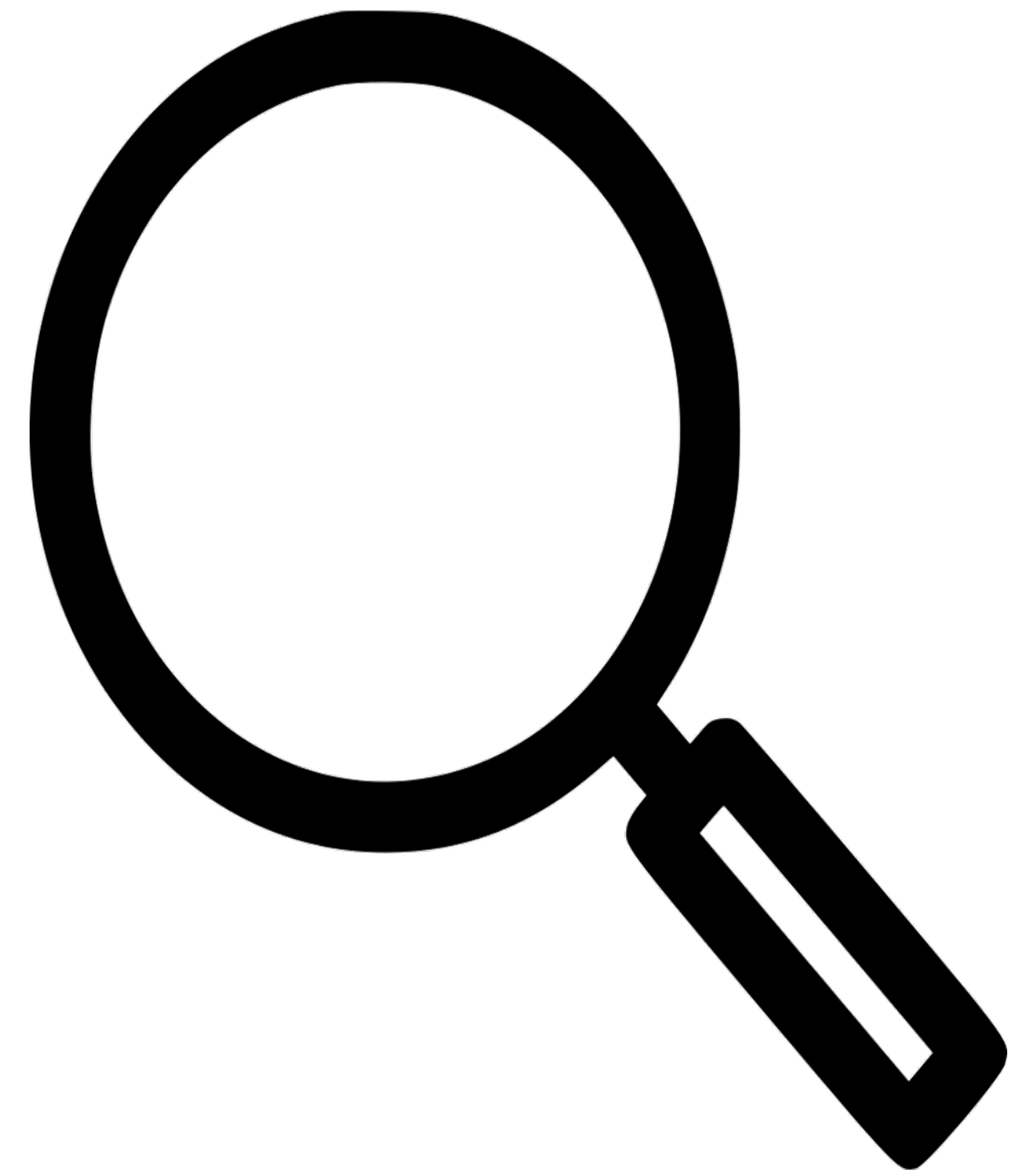
# Analysis of Bids/Proposals

## ❖ What School District Personnel Should Perform Due Diligence?

- Business Official or Purchasing Agent
- Team Members who assisted in RFP development
- Interview Committee/Team

## ❖ What Outside Experts Could Aid in Due Diligence?

- Architect
- Construction Manager or Owner's Representative
- Consultant
- Legal Counsel



# Analysis of Bids/Proposals

## The Various Stages of the Analysis

- ❖ **The Preliminary Analysis** (*Determining Initial Criteria*)
  - Have they provided all forms?
  - Are they an eligible entity (debarment etc.)?
  - Are any clarifications needed (some or all vendors)?
- ❖ **The Technical Analysis** (*Meeting Specification of Deliverables*)
  - Do they demonstrate proper specifications/scope of work?
  - Are they capable of performing the work?
  - Are staff qualified? Financially viable?
  - Able to provide insurances/bonds etc.?
- ❖ **The Pricing Analysis** (*Establishing costs*)
  - Are there errors in pricing?
  - Missing any services or components of the work?
  - Are there extras, exceptions or conditions to pricing?
  - Who is lowest responsible bidder?



# Contractor Due Diligence

## Determining the “Lowest Responsible Bid”

- ❖ School districts are [not required to accept the lowest bid](#).
- ❖ Attorney General Opinion Number 4371 OAG, 1960, No. 4371, p. 201 (in reliance upon an earlier Attorney General Opinion, OAG, 1959-60, No. 3303, Vol. 1, p. 169) concluded as follows:
  - Board has [no obligation to accept the lowest bid](#).
  - If, however, a Board accepts any bid, it is **obligated to accept the lowest responsible bid**.
  - Purpose of competitive bidding process is: **(1)** to secure the most able and efficient performance; **(2)** from the most responsible contractor; and **(3)** upon terms beneficial to the public.
  - Lowest monetary bid does not always fit the above 3-prong test.
- ❖ The **Due diligence requirement**: OAG 4371 in essence suggests a due diligence requirement of the Board to determine the abilities of any prospective contractor and to make the award, if any, to the lowest responsible bidder.

# Analysis of Bids/Proposals

## Performing the Proper Due Diligence

### ❖ Due Diligence Criteria for Determining the Lowest Responsible Bidder

- Did contractor submit bid/proposal in proper format?
  - Did contractor submit all required forms with bid/proposal?
  - Did products/services proposed meet specifications?
  - Price
  - References
  - Reputation
  - Ability to Perform Project (Size, Experience, Capacity etc.)
  - Years in Business
- 
- ❖ How do we address issues when lowest responsible bidder is not the lowest monetary bid?
    - Need to document reasons



# Best Practices in Contractor Due Diligence

## ❖ Contractor Post-Bid Interviews

- Conduct in-person interviews with finalists.
  - Who attends from the school district to conduct interviews (committee)?
  - Are presentations beneficial?
  - Are Tailored vs. General Questions for all interviewees required?
  - How does the committee evaluate each interviewee?

## ❖ How should a school district check references?

- Do all references need to be contacted?

## ❖ Is following information needed from a contractor?

## ❖ Is follow-up verification needed?

- From architects or engineers for construction specifications.
- Legal counsel for contract terms or other procedural issues.

## ❖ How will recommendation be presented to Board?



# Post Bid Opening Negotiations

- ❖ Generally, cannot engage in negotiations through which a bidder, other than the low bidder, may become the low bidder.
- ❖ Lasky v. City of Bad Axe 352 Mich. 272 (1958)
  - Any **substantial variation** from specifications will destroy competitive character.
  - A variation is substantial if:
    - Affects **amount of bid**, or
    - Gives the bidder an **advantage or benefit** not allowed to other bidders, or
    - Is an element considered in **fixing the price**.
- Accordingly, under Lasky, it is inappropriate for the Board to negotiate with and obtain concessions from one of several competitive bidders, after sealed bids are opened and before any bid is accepted, and then accept the amended bid without offering the other bidders an opportunity to amend their bid, when the concessions are tantamount to a substantial variation to the bid.
- Any such contract is a nullity and not enforceable by either party.

# Any Questions?



# Accepting & Rejecting Proposals/Bids



# Accepting & Rejecting Bids/Proposals

- ❖ Before presentation to Board or acceptance:
  - Ensure all specifications and parameters are correct.
  - The contract is in executable form (and appropriate provisions addressed).
  - Bonds, Insurance and other forms secured.
  
- ❖ Bid should be in form necessary for approval, subject to either:
  - Contractor executing attached contract, or
  - Contractor executing contract that is:
    - Negotiated by school district administration and within defined parameters; and
    - Final contract approved by legal counsel.

# Challenges & Bid Protests



# Challenges & Bid Protests

## ❖ Great Lakes Heating v. Troy School District 197 Mich. App. 312 (1992)

- Trial Court cannot disturb the decision of school Board on a bid unless there has been:
  - Fraud, or
  - Abuse, or ← Collectively referred to as a **“violation of the public trust”**
  - Illegality.

## ❖ Under Great Lake Heating, courts will presume that the school Board acted in good faith:

- To minimize delay in construction projects, and
- To limit the expenditure of legal funds, and
- To discourage litigation.

## ❖ Heaney General Contracting v. Clinton Community Schools (2000)

- Generally, a disgruntled bidders do not have standing to sue a school district.
- Supplementation of timely bid which was incomplete was not acceptance of “late bid.”
- Section 1267 does not address “informalities” procedures so Board may set own standards.

## ❖ To obtain injunctive relief against school district award contract to another bidder, disgruntled low bidder must allege that in addition to monetary damages (i.e., lost profits) it would be irreparably harmed (i.e., damage to business reputation).



# Things to Remember....



# Things to Remember...

- ❖ **Understand the legal requirements for each procurement**
  - Supplies/Equipment vs. Construction vs. Services
  - Are Federal Regulations Applicable?
- ❖ **Be sure the information in various sections of RFB/RFP are consistent. Don't cut and paste!**
- ❖ **Provide clear and sufficiently detailed specifications to receive desired services or deliverables desired at fair price. Omit unnecessary details that limit competition.**
- ❖ **Rely upon your professionals in selecting a bidder: Determination of the lowest responsible bidder.**
- ❖ **Pay attention to timing for procurement, award and contract start dates.**
- ❖ **Include a form of contract in the RFB/RFP where possible.**
- ❖ **Establish procurement process/rules and follow them.**
- ❖ **Beware of pushy vendors and do not let favored vendor drive the deal.**
- ❖ **Remember that competitive bidding is intended to protect the taxpayer and not the bidder.**
- ❖ **Don't allow your Board to simply accept bid.**





# Thank you!

## **Legal Disclaimer**

*This document is not intended to give legal advice and does not establish any attorney-client relationship. It is comprised of general information only. A School District facing specific issues should consult with its attorney.*

