

Developing and Managing RFPs

Writing a Proper RFP and Rules to Follow

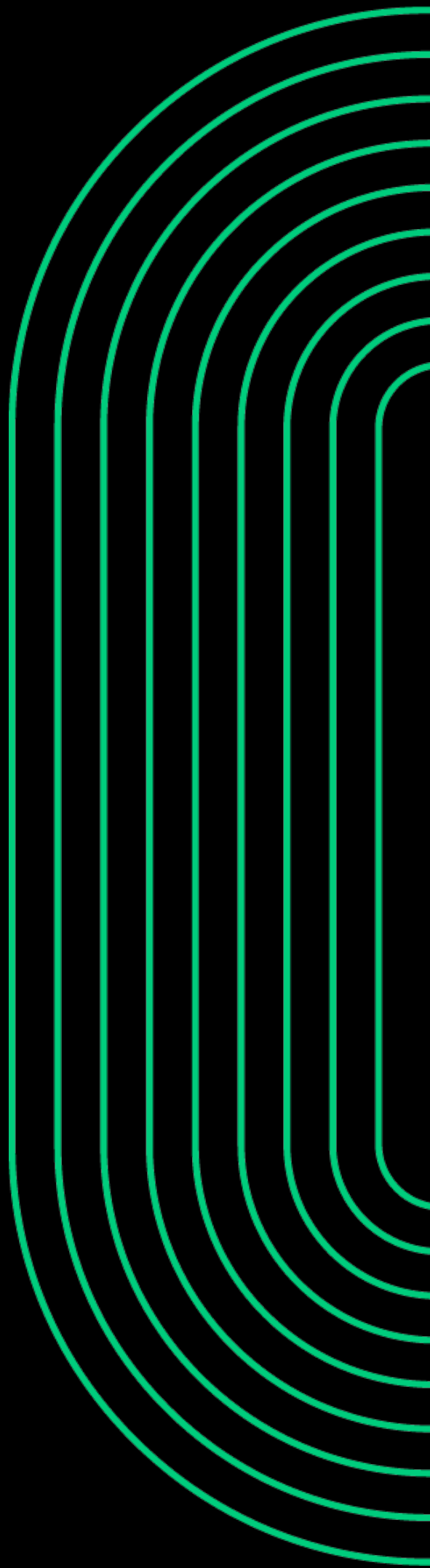
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Jeremy S. Motz
220 Park Street, Suite 200
Birmingham, Michigan 48009
248.988.5895
jmotz@clarkhill.com



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Today's Roadmap & Objectives

WHY (& WHAT)

- The Legal Framework For Procurements – *Construction vs. Supplies vs. Services*

WHEN

- RFP Process & Timing for Procurements

HOW

- Developing the Procurement Documents
- Managing the RFP Process

Objectives

- Identify the Drivers and Key Issues Behind Procurements
- Recognize Problematic Areas
- Understand RFP & Contracting Basics
- Identify Best Practices



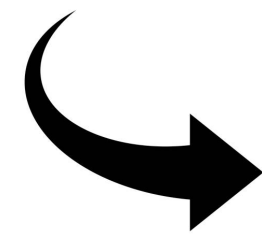
Legal Framework for Procurements



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)



Jurisdiction of Construction Projects

Jurisdiction Over School Construction Projects – MCL 380.1263

- ❖ The superintendent of public instruction has sole and exclusive jurisdiction over the review and approval of plans and specifications for the construction, reconstruction, or remodeling of school buildings used for instructional or noninstructional school purposes and, except for new or expanded high school buildings in a City or Village, of site plans for those school buildings.

Consultation with Local Agencies - MCL 380.1264

- ❖ A school district, intermediate school district, or public school academy shall not commence the **construction of a new school building** or the **major renovation** of an existing school building unless the school district, intermediate school district, or public school academy **consults on the plans for the construction or major renovation regarding school safety issues with the law enforcement agency** that is or will be the **first responder** for that school building..
- ❖ A “school building” means either:
 - A building intended to be used to provide instruction for pupils.
 - A recreation or athletic structure or field intended to be used by pupils.
- ❖ Neither “Consult” nor “Major” is defined.
- ❖ Why is this an issue? When addressing Sections 1263 (sole and exclusive jurisdiction) and 1264 (consultation), what happens if they do not agree?

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**.
- ❖ Energy Savings Performance Contracts may utilize design-building construction process.

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)



Board Policies & Procedures

❖ Why Adopt Purchasing Policies?

- Required under Section 1274 (but not expressly under Section 1267).
- Provides staff with uniform process for procurements and bidding

❖ Objectives of Board Policies

- Define procurement objectives and best interests of school district.
- Track Applicable Laws although Board policies/procedures may be more restrictive.
- Policies should be flexible to allow for changes – less may often be more effective.
- Be cautious of requirement to bid services (unless required by law).

❖ Objectives of Procedures

- Supplement policy with detailed protocols.
- Address more restrictive bidding threshold if desired.
- Define roles and authority in procurements.
- Set protocol for procurements (important for Federal procurements).

ALWAYS CHECK WITH POLICIES/PROCEDURES TO ENSURE COMPLIANCE!



Common Misperceptions of the Law

- ❖ There is **no sole or single source exception** under Michigan law (either Sections 1274 or 1267).
- ❖ School district **cannot split purchases** to evade bidding threshold.
- ❖ The **Emergency Exception** ONLY applies to repairs to school buildings (Section 1267).
 - NO “Emergency” exception for supplies, materials and equipment purchases.
 - Emergency is “health, safety or welfare” of building or occupants.
- ❖ Utilization of a **cooperative/consortium** bidding process **may be** permissible:
 - Must confirm school district policy permits.
 - Must ensure cooperative/consortium processes are legally compliant and comply with school district policy.
 - Must review contract provisions.
- ❖ \$100,000 increased competitive bidding threshold only applies to food purchases.

Common Misperceptions of the Law

❖ **State Website Posting Requirements for Construction**

- Has changed from “Buy4Michigan” to “SIGMA VSS & MILogin”
- Can be lengthy process to obtain login credentials

❖ **Length on State Website and in Newspaper**

❖ **Due Dates and Late Bids**

❖ **Licensed Architects/Engineer required for construction projects over \$15,000 regardless of bidding requirements**



Developing Procurement Documents



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**



The Bidding 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?



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



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. Beware of P.O. issues.**
- ❖ **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

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