



Legal Overview of School Purchasing

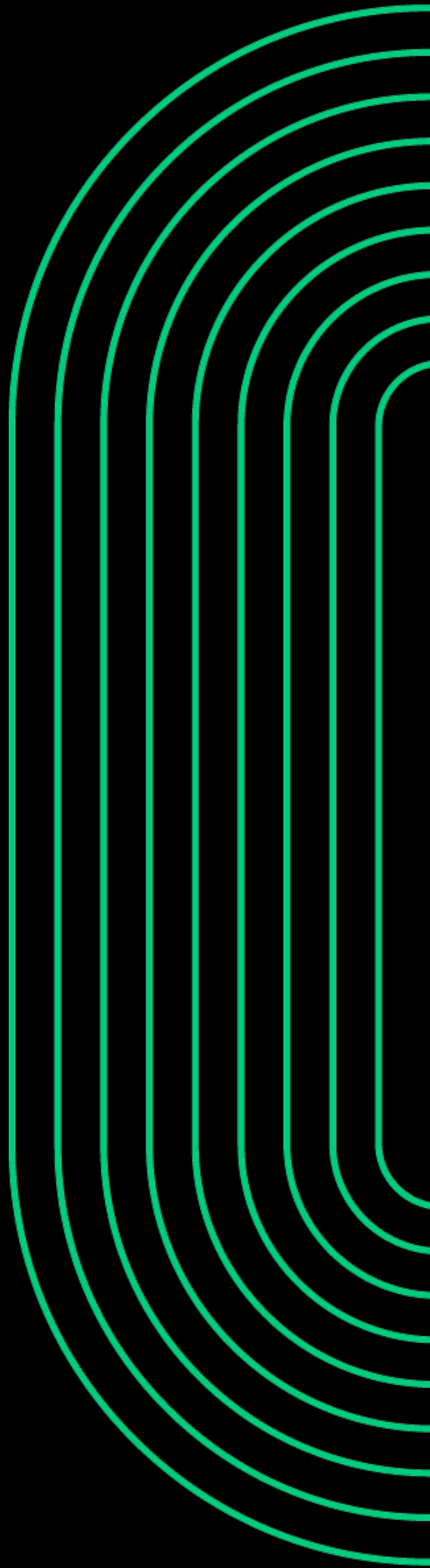
Managing Effective Procurements

*Michigan School Business Officials
Certification Webinar*

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Materials

<https://www.msbo.org/msbo-certification-class-materials/>

Today's Roadmap & Objectives

WHAT

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

WHEN

- RFP Process & Timing for Procurements

HOW

- Legal Issues When Developing Procurement Documents
- Managing the RFP Process

Objectives

- Identify the Legal 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**, and 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

Procurement of Supplies, Materials and Equipment – MCL 380.1274

- ❖ Three **(3) main requirements** that school districts must follow:
 - Requires Board to adopt **written policies** governing the **procurement of supplies, materials and equipment**.
 - Requires that the school district **obtain competitive bids** for the **purchase of any item or group of items** in a **single transaction** costing **\$29,572 (*SY23-24)** or more.
 - Requires that **Board must approve the purchase**.
- ❖ However, there are no specific requirements as to the contents of these Section 1274 purchasing policies under State law. No advertising or public bid opening required by State law (but check Board Policy). However, may be required under Federal laws and regulations if purchase funded via Federal funds.
- ❖ 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



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 **\$29,572 (*SY23-24)** 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

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? The Interplay between 1263 and 1264:
 - Under Section 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.
 - Section 1264 requires consultation with local agency.
 - 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**.

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.



Construction Projects – State Prevailing Wage

Prevailing Wages on State Projects – Public Act 10 of 2023 (MCL 408.1101 et seq.)

- ❖ New Prevailing Wage Laws enacted in March of 2023.
- ❖ New law does NOT go into effect until 91 days after adjournment of the 2023 Regular Session of the State Legislature.
- ❖ Approximately late March of 2024 is anticipated effective date timeframe of new laws.

What construction projects will require compliance?

- ❖ Every contract executed between a “**contracting agent**” and a successful bidder as contractor entered into **pursuant to an advertisement and invitation to bid** for a “**state project**” which requires or involves the employment of **construction mechanics** (other than those subject to jurisdiction of State civil service commission) and which is “**sponsored or financed in whole or in part by the state**”.

Key Definitions

- ❖ “**Contracting Agent**” includes a “school board” authorized to enter into a contract for a State Project or to perform a State Project by the direct employment of labor.
- ❖ “**State Project**” means any new construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning, or improvement of public buildings, schools, works, bridges, highways, or roads authorized by a Contracting Agent.
- ❖ “**Construction Mechanic**” includes skilled or unskilled mechanic, laborer, worker, helper, assistant, or apprentice working on a State Project, but does not include executive, administrative, professional, office, or custodial employees.



Construction Projects – State Prevailing Wage

What are the requirements to comply?

- ❖ 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 contract or start construction within **90 days** of the receipt of the prevailing wages and benefits schedule from LEO, must receive **redetermination** from LEO before awarding contract.
- ❖ Must **post** a copy of the prevailing wages and benefits **at project site**.
- ❖ Must **include** express **contract provisions** that construction mechanics are intended beneficiaries of prevailing wages.
- ❖ 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**.

Construction Projects – State Prevailing Wage

What are the Exemptions to Compliance?

- ❖ The Prevailing Wage Act requirements **DO NOT** apply to:
 - Any **contract entered into prior to** the effective date of the Act.
 - Any **bids let prior to** the effective date of the Act.
 - Any State Project **paid for**, in whole or in part, from **revenue from a millage** that meets both of the following:
 - Millage authorized under Revised School Code.
 - Millage was authorized (approved) by the voters **prior to** the effective date of the Act.

❖



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 ****current law****, if seeking to privatize/outsource non-instructional services, must give the union an opportunity to bid on an equal basis as all other bidders.
- ❖ Under Federal law, if federal funding used to pay or support services (e.g., ESSER & Food Service Contracts) competitive bidding may be required depending upon dollar amount of services.
- ❖ What Effect will PERA Reform Legislation have on Privatization/Outsourcing of Non-Instructional Services?
 - Goes into effect 91 days after adjournment of the 2023 Regular Session of the State Legislature (Late March 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

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

- ❖ Procurement standards apply to: (i) supplies, materials & equipment; (ii) construction **and** (iii) services.
- ❖ 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 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 **\$29,572 (*SY23-24)**.
- ❖ Under Federal law:
 - Micro Purchases Threshold (**\$10,000**) – If under MPT, do not require informal or competitive process.
 - Simplified Acquisition Threshold (**\$250,000**) – If over MPT but under SAT, require quotes from adequate number of qualified sources.
 - Formal Bidding – If over SAT, require sealed bids.
 - Must ensure objective contractor performance and eliminate unfair competitive advantage.
- ❖ Non-competitive Procurements allowed in limited circumstances.
 - 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 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.

Violating the Law!

Consequences for Violating the Law



- MCL 380.1815

A person who **knowingly or intentionally violates** the competitive bidding requirements of Section 1267, or who **knowingly or intentionally permits or consents** to a violation of the competitive bidding requirements of Section 1267, is 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**, but is not subject to the penalties of Section 1804.

- MCL 380.1804

Except as otherwise provided in [the Revised School Code], a school official or member of a school board or intermediate school board or other person who 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], is guilty of a misdemeanor punishable by a **fine not more than \$500.00**, or **imprisonment for not more than 3 months**, or both.

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	Union Equal Opportunity to Bid (*until PERA Reform effective)
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
	Architect/Engineer Required*	

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

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



Common Misperceptions of the Law

- ❖ No **sole or single source** exception to either Sections 1274 or 1267.
- ❖ The **Emergency Exception** under Section 1267
 - ONLY applies to **repairs** to school buildings (Section 1267).
 - NO “Emergency” exception for supplies, materials and equipment purchases.
 - “Emergency” = failure to repair school building would have detrimental effect on building or on the health, safety or welfare of students or occupants of the school building.
- ❖ Obtaining supplies, materials and/or equipment via a cooperative/consortium bidding process is authorized under State law, but may NOT always be permissible and/or legally compliant.
- ❖ \$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

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?



Designing the Solicitation Documents

- ❖ Understand applicable statutory provisions and Board policies and procedures.
- ❖ DO NOT simply cut and paste from other solicitation documents!!!!
- ❖ Develop **Specifications** for Product or Service desired (beware of using vendors)
- ❖ Key Components would 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
 - Require any **exceptions** to be clearly set forth in bid/proposal
 - Specify solicitation/RFP and bidder's bid/proposal will be **incorporated into contract**
 - Require **references**
 - 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
 - Include clearly defined **pricing parameters**
 - Include **form of contract** in RFP/RFB.

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

❖ Documenting 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

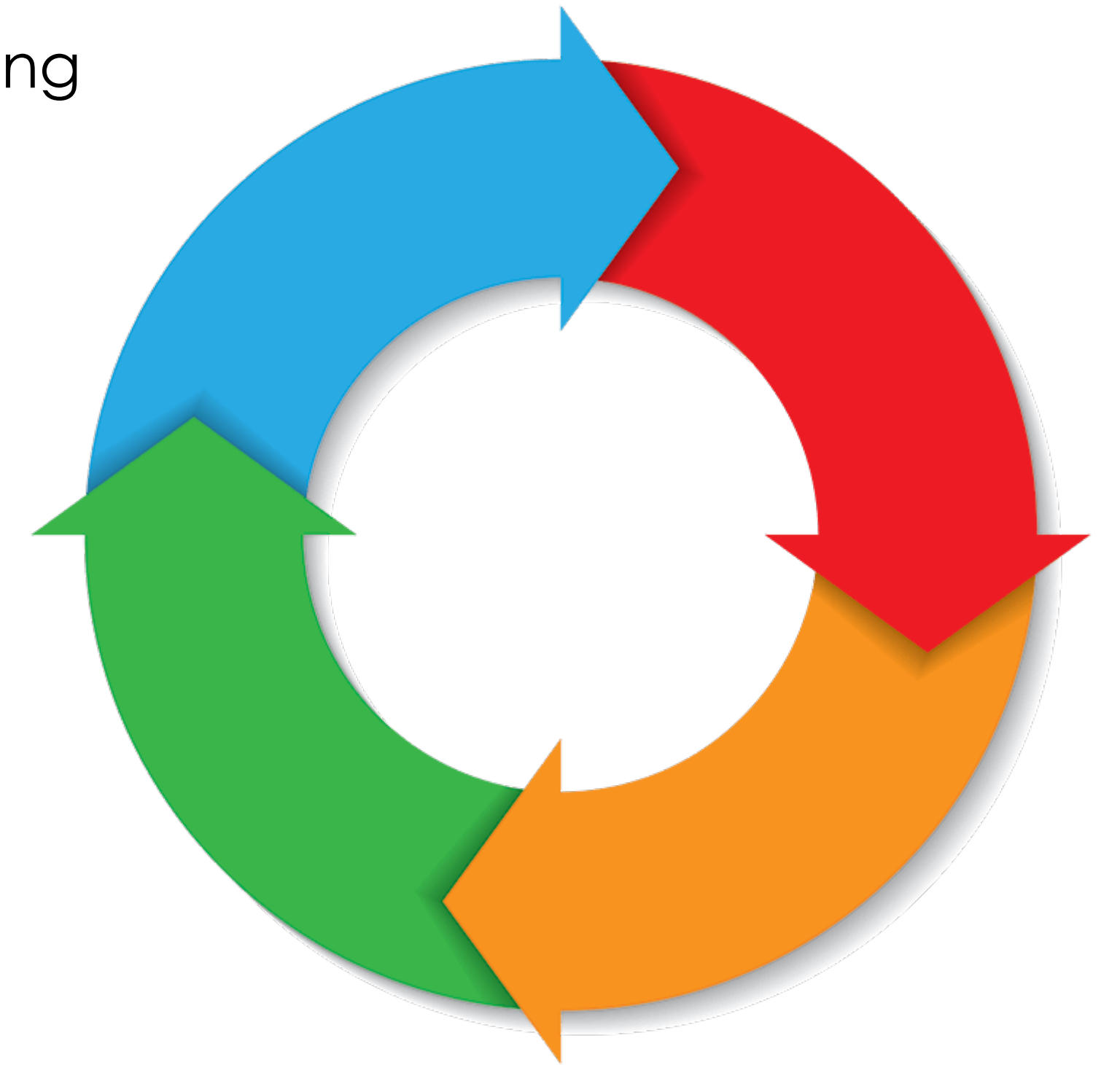
❖ Issue Addenda when necessary

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?

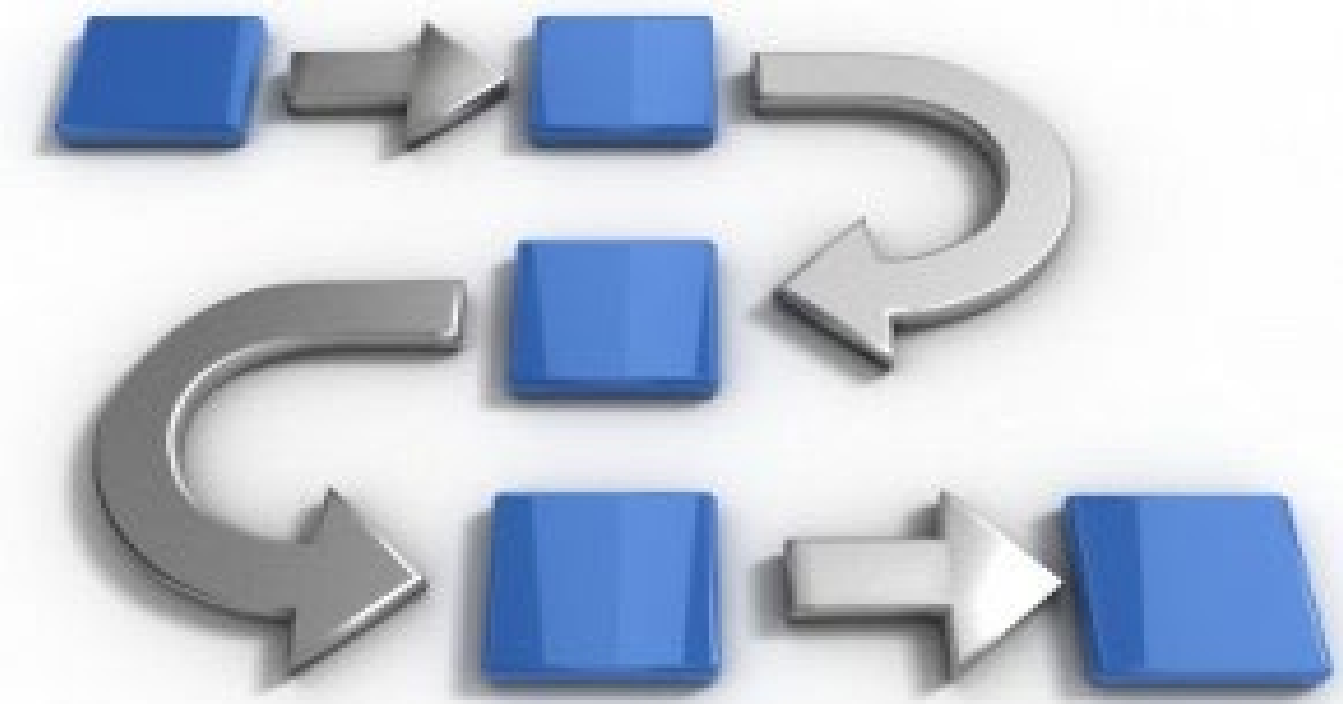
- Beware of **disqualifying bidder** during bid opening.

❖ Documentation:

- Use of Tally Sheets?
- Beware of FOIA Issues

❖ Electronic Bidding Issues:

- Electronic Bids and Submission
- Virtual Bid Openings



Analysis of Bids/Proposals

Performing the Proper Due Diligence

- ❖ 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.
- ❖ 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

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?



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.

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
 - Illegality.
- ← Collectively referred to as a “**violation of the public trust**”

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

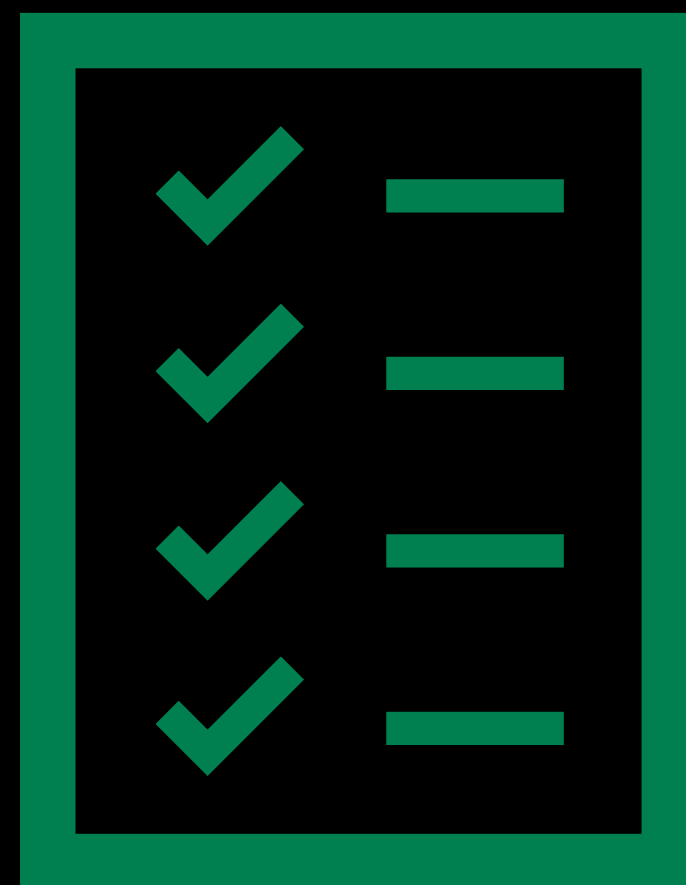
- To minimize delay in construction projects, and
- To limit the expenditure of legal funds, and
- To discourage litigation.

❖ 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. 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.**

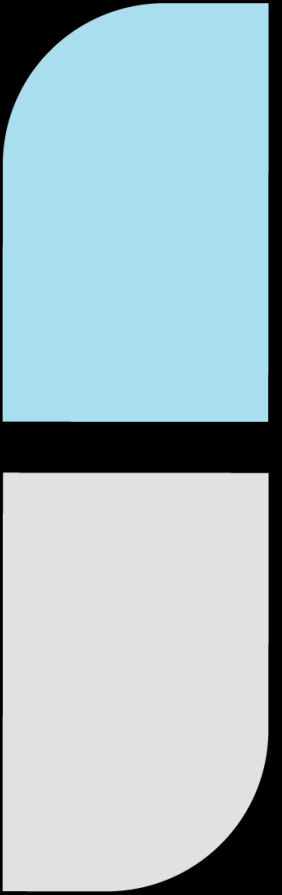




Thank you!

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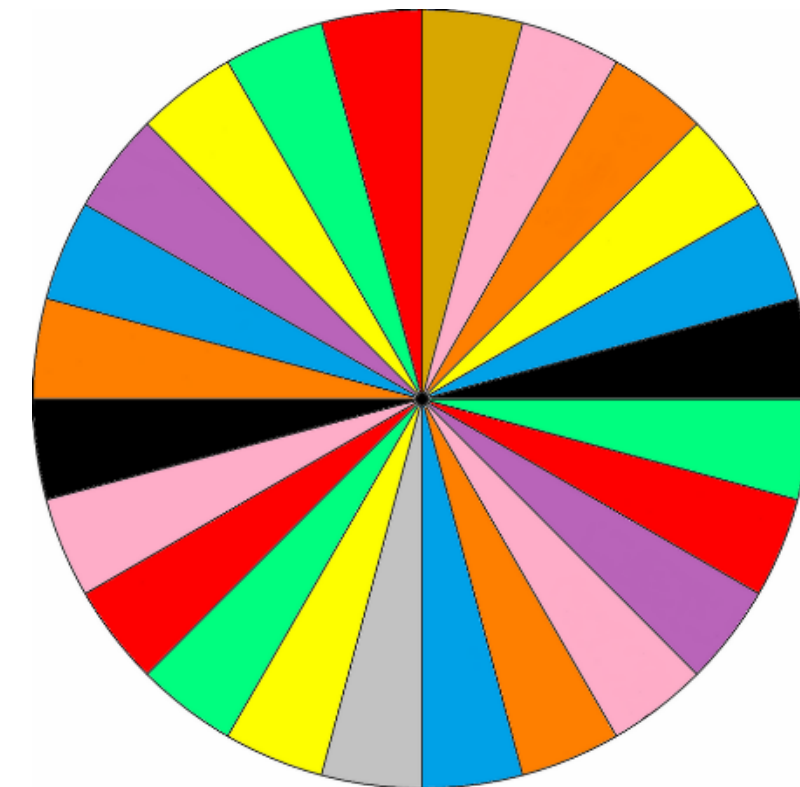
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15-minute Break



When we
return, we'll
spin the
wheel for a
gift card
prize!



PRACTICAL ASPECTS OF PURCHASING

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Today's Purchasing Topics:

- Know the rules
- Know the options
- Know the problems
- Know the opportunities

Remember the Purchasing Basics

- Spend public money reasonably and necessary
- Comply with laws & regulations
- Get the right product, at the right time, in the right quantity, at the right price!
- Save your school district/ISD money
- The “eye test” of public scrutiny

The Rules: Board Policy

- **Board policy**
 - Required by MCL 380.1274
 - Indicates how purchasing is done by SME (Subject Matter Expert) at the district
 - Policy usually has information on construction
 - May have information on services
 - Usually has information on quote limits
 - May be more restrictive than the State

The Rules: Federal Regs

Food Service

- www.michigan.gov/mde
- Food & Nutrition Programs: Fiscal & Administrative Services/Procurement
- Information on operating a school meals program, equipment purchases, Buy American provision, requirement to seek women & minorities owned business for bids
- Procurement Review Flowchart and Tips
- Required to bid out services at least every five years

The Rules: Bond and BSSF Funds

Bond and BSSF Funds

- Require a separate audit to ensure funds are spent correctly
- Specific State rules on what can be purchased and what cannot be purchased
- Bonds – follow ballot language and Treasury application
- BSSF – follows State law and prior determinations by MDE, also ballot language
- MSBO web site links: Bulletin on bond and sinking fund:
https://www.msbo.org/sites/default/files/bulletin_sinkingfunds.pdf and Sinking Fund determination letters:
<https://www.msbo.org/resources/document-center/sinking-fund/>

USE OF BOND PROCEEDS

The use of bond proceeds by public schools is defined in the Revised School Code, (MCL 380.1351-380.1372). Briefly, allowable and unallowable uses of the bond proceeds (as outlined in the "Bond Qualification Process Overview" prepared by Michigan Department of Treasury, Cash and Debt Management Division) are as follows:

Allowable Uses

- ☐ Construction of new school buildings
- ☐ Construction of additions to existing school buildings
- ☐ Remodeling existing school buildings
- ☐ Energy conservation improvements
- ☐ Asbestos abatement
- ☐ School buses
- ☐ Purchasing land
- ☐ Developing and improving sites
- ☐ Developing and improving athletic and physical education facilities
- ☐ Developing and improving playgrounds
- ☐ Costs of this required audit
- ☐ Refunding debt (if net present value savings can be demonstrated)
- ☐ Direct bond program costs, such as: (professional fees, election fees, issuance costs, qualification fees, insurance fees, final audit costs); paid after the bond issue has been approved by voters
- ☐ Purchasing loose furnishings and equipment including furniture and equipment not permanently affixed to the building and computers for non-instructional use
- ☐ Purchasing technology, this is limited to:
 - ☐ Hardware and communication devices that transmit, receive or compute information for pupil instructional purposes
 - ☐ Initial purchase of operating system and customized application software if acquired in conjunction with hardware
- ☐ The weighted average maturity of qualified bonds must not exceed 120% of the average reasonably expected useful life of the facilities excluding land and site improvements being financed with the proceeds of the qualified bonds. (MCL 388.1925)

The Michigan school sinking fund determination letters are provided as a service of MSBO and Thrun Law Firm, P.C., arranged in alphabetical order, by letter topic (ie., asbestos, brickwork, doors).

SINKING FUND DETERMINATION LETTERS (TOPICS BY SECTION)

- [A to D Table of Contents](#)
- [E to L Table of Contents](#)
- [M to S Table of Contents](#)
- [T to Z Table of Contents](#)

TREASURY LETTERS

- [Letters 1-50](#)
- [Letters 51-100](#)
- [Letters 101-150](#)
- [Letters 151-200](#)
- [Letters 201-250](#)

May 12, 1998

Ms. Linda Rairigh
Michigan Department of Treasury
Treasury Building
Lansing, MI 48922

Dear Ms. Rairigh:

As we discussed, I am inquiring about the use of the Building and Site Sinking Fund for the replacement of a partition wall that is utilized to divide the cafeteria and gymnasium in some of our elementaries. This partition wall is an integral part of the building and was designed to allow us to continue to use the gymnasium for physical education classes even during the lunch period. For your information and review, I have attached a flyer, which depicts the partition wall I am describing. As you will note, it is a fundamental part of the building and a critical component of the buildings' design.

Your input on the use of the Building and Site Fund for the replacement of this wall would be greatly appreciated. I am also confirming that the replacement of boilers is an approved use of these funds. In addition, the use of a playground safety consultant as well as the repairs to playgrounds which result, are also eligible expenditures.

Thank you for your help on these matters. If you have additional questions, please feel free to call me at (616) 329-7244.

Sincerely,



Michael R. Collins
Director of School Services

RECEIVED
DEPT. OF TREASURY

MAY 14 1998

LOCAL AUDIT & FINANCE DIV.

TOPIC	SUB-TOPIC	ALLOWABLE (YES or NO)	RATIONALE OR RESTRICTION	PAGE & YEAR OF TREASURY LETTER
Ozinators (swimming pools)	Replacement	Yes		277-280 (1999)
P.A. system	Installation	No	Wiring, installation costs, and built into the wall speakers are allowable. Mount on the wall and stand alone equipment expenditures are not allowable because equipment	201-202 (1999) 345-348 (1997) 385-388 (1996) 389-392 (1995) 585-589 (1999)
P.A. system	Replacement	No	Equipment	267-272 (1997) 462-465 (1999) 520-523 (1999)
Painting	Painting existing construction	No	Repainting of existing structures is considered maintenance	111-114 (2001) 119-120 (2001) 287-288 (2001)
Painting	New construction	Yes	Painting of existing structures is not allowable because it is considered maintenance	267-272 (1997) 273-276 (1996) 449-455 (1998) 472-474 (2000) 499-501 (2000) 581-582 (1999) 608-609 (2001) 610-611 (2003) 667-669 (1997)
Parking Lot	Addition of new drive	Yes		294-295 (2000) 342-344 (2000)

Mr. Michael R. Collins, Director of School Services
Portage Public Schools
8111 South Westnedge Avenue
Portage, Michigan 49002

Dear Mr. Collins:

Thank you for your recent letter regarding the School Code Sinking Fund requirements. Pursuant to Department of Treasury Letter No. 01--95, you are requesting an opinion regarding whether specific expenditures comply with the restrictions in both Section 1212 of the School Code and the interpretations of the Department of Treasury.

In my opinion, the attached project list/letter, dated August 11, 1997, appears to meet the requirements of both the act and the numbered letter, with the following exceptions:

Roof Repair: Repair is acceptable. Any roof maintenance projects are not acceptable from sinking fund money.

District Mechanical Projects: The purchase and replace of equipment is not an authorized use of sinking fund money.

Paint: Painting is acceptable If you will be painting new construction. Painting of exiting structures is considered to be maintenance and is unacceptable from sinking fund money.

The Rules: Compliance

- Review & approve all purchases
- Ensure Board approves required purchases
- Educate district staff on procedures
- If faced with a potentially unlawful purchase, advise your boss and/or business manager of the situation *in writing* after discussing with them
 - Keep to the facts when putting information in writing (remember these memos/emails can be FOIA'd)

The Rules: Determination of the Lowest Responsive & Responsible Bidder

- Bid documents should require bidder to self-certify if they meet specifications.
 - Did bidder submit all required forms with bid?
 - Did the product they bid meet the specification requirements (yes/no)?
 - Start with lowest priced bid and determine if bidder is responsible (financially sound, reputation, ability to perform, years in business, good references, etc.).
 - Considerations on why not to go with lowest bid: past performance, incomplete bid, specifications or addendums not considered

~~Real~~ Hypothetical Purchasing Problems

- You have a department head that signs a contract for a purchase over the bid limit. The contract is binding despite not following district protocol. What are your options?
 - A. Approve the purchase and hope no one notices
 - B. Call your attorney for advice
 - C. Isn't this considered an emergency?
 - D. Nothing. This would never happen in my district!

The Options

- Quoting
- Bidding
- Consortiums
- Cooperatives

Item	Bid Required	Advertise in newspaper	Post to State site	Public Opening
Construction MCL 380.1267	Yes, if over bid limit	Yes, once	Yes, for 14 days	Yes
Supplies, etc. MCL 380.1274	Yes, if over bid limit	No	No	No
Services	No	No	No	No

The Options: Quoting



- Usually requires pricing options from three vendors
 - Can be a formal quote document (similar to Bid Response form)
 - Can be print screens from the internet
 - Can be a phone log of the company, rep, pricing and date
- Usually there is a limit in the Board policy over which a quote is required for audit purposes
- May want to do it for any “substantial” purchase to confirm getting the best price and product
- Don't assume that a quote from a month or a year ago is still the best price now; most have expirations
- Determination of which vendor to use is based on preference (most responsive and qualified) not lowest price (use criteria similar to a bid)

The Options: Bidding options

- District level
- Consortium (group of districts combining requests in one larger bid, increases “spend” and can get better pricing)

The Options: Solicitation Types

- Invitations for/to Bids (IFB, RFB, ITB)
- Requests for Proposals (RFP)
- Request for Qualifications (RFQ)
- Create one or two page to summarize

The Options: Invitation for Bids (IFB)

- Construction, supplies, materials & equipment
- Clear, well defined specifications
- Public bid opening
- Award to the lowest responsive & responsible bidder
- Inflexible – the bid amount is the bid amount

The Options: Request for Proposals

- Services, software, more complex solutions
- Publish the evaluation criteria
- Proposals not opened publicly
- Evaluation teams rate technical aspect (rating or scoring forms/matrix)
- Pricing rated by Purchasing
- Bidders ranked based on total score
- 2nd phase- presentations and/or demonstrations
- Award based on price & other factors (best value)

Solicitation Format

Suggestion - use templates

1. Purpose & Background Information
2. Instructions to Bidders
3. General Terms & Conditions
4. Special Terms & Conditions
5. Specifications/Requirements/ Evaluation Criteria
6. Bidder questions
7. Certification
8. Familial Disclosure affidavit
9. Iran Economic Sanctions affidavit
10. Exception to Proposal Form
11. Pricing format

The Options: Developing Specifications for Solicitations

- Responsibility
- Vendor involvement in development or is it a Conflict of interest?
- Brand name or equivalent
- Functionality and/or performance specifications
- Sole source items – **do not exist**
 - Example: a building wants walkie-talkies, however these are just communication devices. Bid should state how items are to be used. Don't assume walkie-talkies are the best and only solution.

The Options: IFB/RFP Process Suggestions

- Review specifications: clear and open
- What are the minimum requirements
- Include relevant terms and conditions
- Think with the end in mind – What do you need to know in order to determine if specs are met or to effectively rate the bidder?

The Options: IFB/RFP Process Suggestions

- Issue bid document in Adobe PDF format
- Invite as many bidders as possible
- Builders Exchange
- Use a third-party e-procurement solution
www.bidsync.com or www.mitn.info
 - Saves time and money distributing bids
 - Ease of issuing addendums
 - Increases bidder pool
 - Saves time compiling bid results & issuing results

The Options: IFB/RFP Process Suggestions

- NEVER tell bidders the budget amount
- All communication should go through the purchasing contact
- Pre-bid meeting
 - Vendor sign in sheet
 - Announce that any answers are tentative and will be officially answered in writing via addendum
 - Record and publish via addendum

The Options: IFB/RFP Process Suggestions

- All questions & answers shall be published and shared with ALL bidders
- Offer opportunity to “protest the specifications” – this will reduce bid protests
- Provide process timeline in document (evaluation timeline, demo dates, award date) if known
- Absolutely do not accept bid AFTER deadline
 - **What is the difference between 1 minute late and 5 minutes late?**

The Options: IFB/RFP Process Suggestions

If Public Bid Opening, be sure:

- Another school district staff is present
- All attendees sign in (including district staff)
- All required documents (bid bond, familial statements, Iran affidavit etc.) are included before reading bid
- Bidders may look, but not touch bids submitted
- Do not write on an original bid
 - Request bidder include at least 1 copy of bid
- These suggestions are to protect the district/ISD and staff

The Options: IFB/RFP Process Suggestions

For Post Bid Interview/Demonstrations:

- Verify specifications have been met
- Bidder to provide schedule of values (construction)
- Opportunity to clarify items in proposal or discuss timelines
- Provide script & timeline of presentation/ demos to invited bidders
- Be clear that you cannot accept food or gifts – avoids potentially embarrassing situation
- Debrief with evaluation team and record strengths & weaknesses of all bidders

The Options: IFB/RFP Process Suggestions

After Award:

- Obtain insurance, bonds, criminal back- ground checks, etc. from successful bidder
- Notify unsuccessful bidders
- Post bid summary to website (public information)
- Conduct unsuccessful bidder debriefing (if requested)

The Options: Evaluation Teams

- Contracting officer to determine team
- Number of members should be an odd number
- Review roles & responsibilities
- Members to sign evaluation team agreement and conflict of interest disclosure form
- No direct communication with bidders during process

The Options: Cooperative Bidding

- Benefits – another entity bids out the items, can be available immediately
- Board policy – makes sure your policy allows using cooperatives
- Cautions – check that pricing is from a competitive and not negotiated bid
- Who conducts cooperative bids?
 - School districts and/or I.S.D.
 - County
 - State of Michigan (MIDEAL)
 - National: AEPA, Source Well (NJPA), OMNIA (U.S. Communities), E&I, PEPPM, MHEC
 - Other: REMC (authorized by the State legislature for MI Schools)

The Options: To Bid or Not to Bid?

- By bidding out, you can save time and money by doing it once for the year, instead of multiple quotes
 - Emergency septic service
 - Required multiple times during the year
 - May not know how many times but know it will be needed
 - Allows district to set price and vendor at beginning of year
 - Allows vendor to know they are the preferred provider and an estimate of the spend for the year
 - Roof Leak Services
 - Cannot call just any vendor, must be qualified
 - Allows district to vet vendor qualifications ahead of service

The Options: Operational Savings

- Blanket POs (BPO) for routine, ongoing purchases
 - Monitor use
 - Clearly indicate:
 - Who is authorized
 - Maximum dollar amount
 - Valid time period of BPO
- BPOs still must meet quote & bid requirements
 - Don't automatically do BPOs to the same vendor each year – check pricing
 - The cheapest vendor for lightbulbs may change from year to year

The Options: Operational Savings

- Order goods via the internet
 - When not available elsewhere
 - Limit items available to staff
 - Establish Online approvals
 - Blanket POs, procurement cards
- Procurement cards

The Options: Internet Purchases

- Options with purchasing controls:
 - Many vendors offer ordering on their websites, with built in second approvals
 - i.e. Amazon's Business platform, options to use a third party catalog software, & some finance software packages offer a "punch out" system
 - Advantages can be time saving with placing, approving, paying and recording orders
 - Be sure to determine what savings (time, money) they offer before implementing any or all of them

The Options: Procurement Cards

- Best for small dollar purchases
- Offered by most major banking institutions
- Need clearly defined policies:
 - Vendor restrictions
 - Allowable purchases
 - Dollar limitations
 - Monthly Reconciliation
 - Regular audits on cardholders
- Transparency requirement as of 12/15/14 to list district/ISD cardholders and their credit limit
 - http://www.michigan.gov/documents/mde/Guidance_Section_18_463857_7.pdf

The Options: Procurement Cards

- Pros:
 - Saves staff time
 - 2010 National Institute Governmental Purchasing - Purchasing Card Benchmark Survey :
 - Administrative Cost Savings \$71/transaction
 - Great convenience to employees (especially when traveling)
 - Rebates
- Cons:
 - Harder to track all spending (which can help determine possible savings)
 - Timeliness of posting expenditures for up to date budgets
 - Approvals can be after purchases (sometimes more than a month)
 - Some districts/ISDs lower the max transaction amount
 - May require a PO (using "P Card" as the vendor) for purchases over a specific dollar amount before purchase is made (i.e. pre-approval)

~~Real~~ Hypothetical Purchasing Problems

- Proposals that arrive for the same bid are received by different staff, who store them in separate places. After the bid closes, the procurement staff gathers all the bids they are aware of but not all of the bids that were submitted. The error is found when a vendor contacts the district asking about the results. By this time, the evaluations are complete and have been announced but the other proposals are found and they had arrived on time. What do you do?
 - A. Ignore the other proposals and burn them at midnight
 - B. Call your attorney for advice
 - C. Throw out all the bids and do it all over again
 - D. Include the new bids and re-evaluate all of them again.

The Problems

- Separating out purchases to avoid bidding
- Cooperatives that did not actually bid
- Not checking for options and other prices
- Emergency purchases (Lack of planning does not constitute an emergency)
- Items not available when needed

The Problems: Savings vs. Availability

- Best time to order items is before the season begins
 - State of Michigan (through MIDEAL) bids Road Salt out in the summer for the next winter
 - Schools/municipalities determine minimum amount they will be obligated to purchase
 - Bid sets the price
 - Allows suppliers to determine minimum amount that will be purchased
 - Deadlines to accepting deliveries are set, buyers may have to warehouse some to meet the minimum purchase

The Problems: Savings vs. Availability

- Even for smaller items availability can be an issue
 - Most schools purchase sidewalk salt through their regular vendors
 - However, even with an usage estimate, vendors may not supply all that is needed
- May consider an early cut off of delivery (usually in February or March!)
 - This may be required so that you have extra salt (bags) warehoused
 - That we agree to purchase a certain amount each year
 - And that we may need to take any amount not delivered by their Feb/Mar cut off early, requiring that we store it in the buildings

The Opportunities: Spend money fairly & reasonably

- Periodically assess pricing
- Invite vendors to provide quotes
- Watch real & perceived conflicts of interest
- Use the smell test
- Transparency, transparency, transparency!

The Opportunities: Right product!!

- Understand what the requestor needs
 - Don't assume that what they asked for is what they need
 - Request more details or documents if you are unsure
- Involve the requestor in the review process, if bidding the purchase
 - Can assist with vetting before the staff/dept gets involved
- Specifications - should not be too loose or too restrictive
 - Loose – could get more than they need/want
 - Restrictive – could lose out on something better
- Purchase Order (PO) – should include all pertinent and correct information
 - Include on the PO special terms, quote #, clauses or requests
- Inspect items upon receipt

The Opportunities: Direct Cost Savings

- Price savings:
 - Call vendors
 - Obtain quotes
 - Quote items you buy consistently but not regularly during the year, i.e. ceiling tiles
 - Quote items you buy in large quantities but not regularly, i.e. items for a new program
 - Negotiate price
 - Ask for discounts:
 - Quantity discounts
 - Educator's discounts
 - Payment discounts

The Opportunities: Direct Cost Savings

- District preferred contracts
 - Target & leverage large spend areas
 - 80/20 Rule: 80% of your cost comes from 20% of your purchases
 - Office, school, and custodial supplies
 - Bid or use cooperative contracts
 - Standardize items
 - Can reduce operating costs and inventory, i.e. buy one brand & only a few versions of desktop and laptop computers; helps with support and maintenance
 - Limit access to items (generic brands)
 - Multiple year pricing agreements

The Opportunities: Direct Cost Savings

- Ask for price concessions
 - If you don't ask, you won't get it
- Warehouse versus just-in-time orders
 - May need to use both
- Cooperative bids
 - Easy to Use
- Consortium bids
 - Can combine purchasing spend between districts/ISDs to save even more money
 - Is your district/ISD a part of multi district consortiums for waste removal, milk and bread, transportation
- When is the best time to bid?
 - Construction, salt, etc.

The Opportunities: Operational Savings

- Review internal purchasing processes
 - Are written procedures easy for staff to understand and access?
 - Are there Purchase Order minimums?
 - Are there different approval levels based on dollar amount?
 - Beware: Splitting of POs – violates the spirit of the process, may violate the law

The Opportunities: Purchasing Resources

- Michigan Public Purchasing Officers Association (www.mppoa.net)
- National Institute of Governmental Purchasing (www.nigp.org)
- Institute for Supply Management (www.ismworld.org)
- Michigan School Business Officials (www.msbo.org)
- National Association of State Procurement Officials (www.naspo.org)

Questions?



Finalize Credit for Attendance

New Process: The MSBO Evaluation is your record for attendance.

Please complete by November 3, 2023

- ✓ Receive an email from survey monkey for the MSBO evaluation. Your evaluation will be your record for attendance.
- ✓ Receive e-mail from MOECS-noreply@michigan.gov to fill out an evaluation for SCECHs.