

# Fundamentals of Purchasing Policies and Procedures

## *Legal Requirements & Best Practices*

*Michigan School Business Officials  
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Session B22*

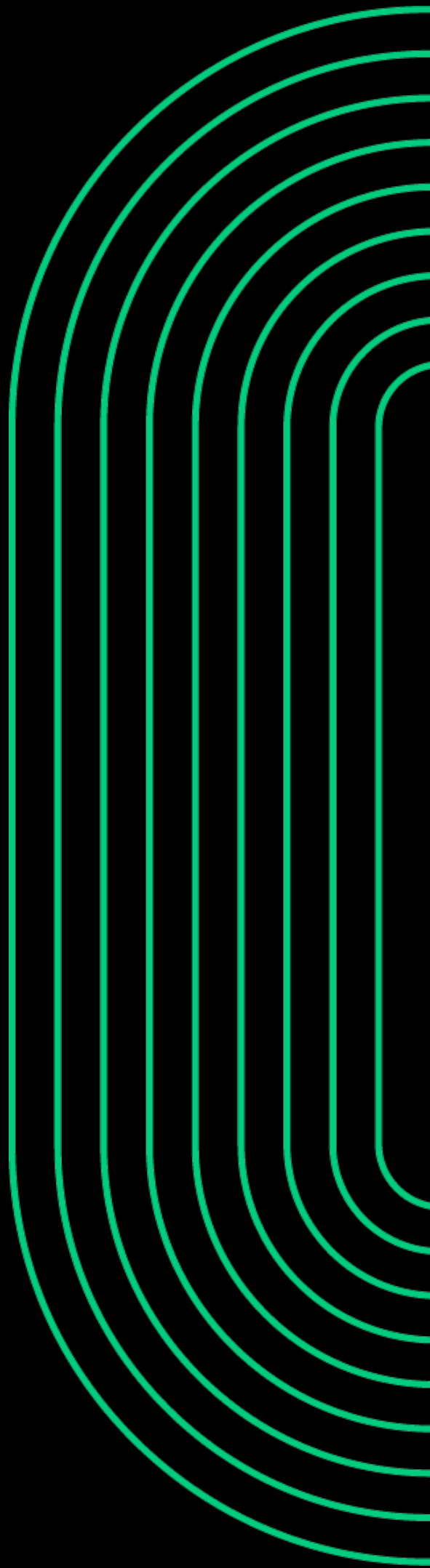
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# Today's Roadmap & Objectives

## WHY (& WHAT)

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

## HOW

- ❖ Overview of Policies and Procedures

## OBJECTIVES

- ❖ Implementing the Law through Policies & Procedures
- ❖ Legally Required Policy Examples
- ❖ Understand Policy Issues
- ❖ Identify Best Practices



# Legal Framework – 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 Power for Purchasing:
  - 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

- ❖ 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 **\$28,048** 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 **\$28,048** 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.***



# Procurement of Services

- ❖ No express legal requirement under **State law** to seek competitive bids for services. However, exceptions apply:
  - Federal funding used to pay or support services (ESSER & Food Service Contracts).
  - Privatizing or outsourcing non-instructional service with “unionized workforce” - must give union the “opportunity to bid on an equal basis as other bidders.”
  - Required by Board Policy
  
- ❖ However, utilization of a competitive bidding process to secure services may be advantageous:
  - Transparency
  - Obtain Competitive Pricing
  - Secure correct “contractor fit” for project
  - Secure best terms and conditions for school district and project
  
- ❖ Professional Services & Outsourcing/Privatization RFPs/Procurements are very unique depending upon the Service. Can be difficult to obtain “apples to apples” proposals/bids.



# 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 **\$28,048** (FY 22-23).
- ❖ 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 require **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.**



# 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*
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	Federally Required
Board Approval	Board Approval	Board Approval
	Architect/Engineer Required*	

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



# Legal Framework – 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.

# Common Misperceptions of the Law

- ❖ No sole or single source exception to either Sections 1274 or 1267.
- ❖ Emergency Exception
- ❖ 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 NOT always 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

## ❖ Waiver of RFP vs. Legal Requirements

- Bid Bond
- Familial Disclosure Affidavit
- Iran Linked Business Certification (Affidavit)

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





# To Bid or Not To Bid...That's The Purchasing Question

## ❖ 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



# Implementing the Law Through 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.

## ❖ 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!***



# Implementing the Law Through Board Policies & Procedures

## Administrative Procedures

### ❖ Objectives of Administrative Procedures

- Supplement Board policies and further define policy objectives
- Address detailed protocol for all aspects of purchasing
- Address requirements of the law
  - Section 1274 vs. Section 1267
- Set more restrictive thresholds for certain purchases
  - Implement these wisely
- Detail various compliance requirements
- Define roles and authority in purchasing

## Reservation of Rights

### ❖ **Your Policy/Procedures should require the reservation of rights in favor of the district in bidding documents.**

- Accept or Reject any and all bids in whole or in part.
- Waive any informalities or irregularities in bidding process (unless required by law).
- Accept other than the lowest bidder.



# Implementing the Law Through Board Policies & Procedures

## How do we effectively put policies into practice?

- ❖ **Annually review internal purchasing policies, procedures and processes.**
- ❖ **Annually review any purchasing forms or contracts.**
- ❖ **Consider developing internal Purchasing Manual for staff.**
- ❖ **Ensure Policies, Procedures and Purchasing Manual easily accessible to staff.**
- ❖ **Education of Staff!!!**
  - Hold staff in-service on purchasing.
  - Ensure staff understand their roles and levels of purchasing authority.
  - Make staff aware of different manners of purchasing and benefits of each.
- ❖ **Annually review anticipated needs of school district.**
  - How should we purchase? Warehouse vs. “as needed” purchases.
  - Purchasing the right product at the right time at the right price.
  - Periodically (at least annually) assess pricing.



# Purchasing Policies Case Studies

## ❖ 2018 Requirements To Update Procurement Standards

- Required policies and procurement standards to conform with Federal Uniform Guidance and regulations.
- Lessons learned in implementing requirements into a policy or policies.

## ❖ Policies with Requirements that are Not Legally Required

- Policies that include advertisement in newspaper for non-construction purchases.
- Policies on use of cooperative arrangements.
- Be cautious of requirement to bid services (unless required by law).

# Purchasing Cards & Required Policies

## Purchasing Cards

- ❖ Should be used for small dollar purchases.
- ❖ Convenient for staff and provides administrative cost savings (and maybe rebates).
- ❖ **Credit Card Transactions Act – MCL 129.241 et seq.**
  - Permits the establishment of credit card arrangements by school districts.
  - Requires Board to adopt written policy by resolution.
  - Written Policy must:
    - Set internal controls and designate officer/employee who oversees program.
    - State cards can only be used for official business.
    - Require users to submit specific records and documentation of use.
    - State user is responsible for protection/custody and must notify if stolen.
    - State user must return card upon termination.
    - Require approval of statements before payment and payment within 60 days.
    - State disciplinary procedures for unauthorized use.
  - Credit Limit for all cards cannot exceed 5% of total budget for current fiscal year.
- ❖ **MCL 380.1254 – Expense reimbursement and Credit Card Usage.**



# Fiscal Responsibilities

## Compliance Issues

### ❖ Transparency!

### ❖ Beware of Conflicts of Interest (real & perceived).

- MCL 15.321 *et seq.*
- MCL 380.1203
- MCL 380.634 (ISDs only)
- MCL 380.1814 (all public school entities)

### ❖ Smell Test.

### ❖ Beware of “pushy” vendors.

### ❖ Have a process to review and approval all purchases (checks & balances).

### ❖ Do NOT split purchases to satisfy bidding requirements.

***If confronted with potentially unlawful or non-conforming procurement, notify proper administrators and do not cover up, and contact legal counsel promptly.***





# Thank you!

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