

FUNDAMENTALS OF PURCHASING POLICIES AND PROCEDURES



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About the Presenter



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What's on Tap?

- **The Legal Aspects of Purchasing**
- **Issues To Consider When Bidding Not Legally Required**
- **Implementing the Law through Policies/Procedures**
- **Legally Required Policy Examples**



This document is comprised of general information relative to the subject matters discussed herein. It is not intended to give legal advice and does not establish any attorney-client relationship. School Districts facing specific issues should seek the assistance of an attorney.

Legal Aspects Of Purchasing – General Purchasing 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.”**

Legal Aspects of Purchasing – Supplies/Materials/Equipment

Procurement of Supplies, Materials and Equipment – MCL 380.1274

- Board shall adopt written policies governing the procurement of supplies, materials and equipment; however, **NO SPECIFIC REQUIREMENTS FOR POLICIES.**
- Must obtain competitive bids for the purchase or any item or group of items in a single transaction costing **\$23,417** or more & school board must approve purchase.
- Exceptions:
 - 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, but may follow aspects of Section 1267

Legal Aspects of Purchasing – 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 in emergency situation, the school district shall obtain competitive bids on all material and labor to complete construction costing **\$23,417** 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**
- **Michigan-based Business Preference (same requirements as Section 1274)**



Legal Aspects of Purchasing – 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.
- May pay with general funds or issue bonds.
- Energy conservation improvements or substance removal or treatment authorized by this section is **subject to the competitive bidding requirements of section 1267.**

Procedures for Posting on State Website

- All school districts must post advertisements directly to “administrative site” of www.Buy4Michigan.com (formerly www.bid4michigan.com)
- Posting Procedures
 - Intended for solicitations over \$10,000 (per State website).
 - School district must fill out required forms and create an account to post.
 - Free training is available and may be helpful for users.
 - School district must post bids (and attachments) itself.
 - May be used for bids other than construction.

Legal Aspects of Purchasing – Services

General Overview

- **No requirement to seek competitive bids for services, EXCEPT:**
 - **Food Services – Federal law and MDE requirements require specific RFP process.**
 - **Privatizing non-instructional service with “unionized workforce” - must give union the “opportunity to bid on an equal basis as other bidders.”**
 - **Board Policy Requires Competitive Bidding.**

Legal Aspects of Purchasing

Iran Economic Sanctions Act - MCL 129.311 et seq. (Became effective April 1, 2013)

- 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.

Legal Aspects of Purchasing

- **Bid Bonds**
 - Required for Section 1267 and 1274a, but may use under Section 1274 or other bidding
 - 5% of bid amount
 - Bid bond, certified check, cash
 - Must be filed with Board

- **Performance and Payment Bonds (MCL 129.201 *et seq.*)**
 - Applies to projects to construct, repair, or alter public buildings (including schools)
 - Applies only if contract amount exceeds \$50,000
 - Bonds must be at least 25% of contract amount
 - Must be issued through licensed surety

***** School districts may require performance and/or payment bonds in other types of contracts.**

Legal Aspects of Purchasing



Common Misperceptions of Purchasing Laws

- 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.
- \$100,000 increased competitive bidding threshold only applies to food purchases.
- Obtaining supplies, materials and/or equipment via a cooperative/consortium bidding process is NOT always permissible and/or legally compliant.
- Waiver of RFP Specifications vs. Waiver of Legal Requirements
 - Bid Bond
 - Familial Disclosure Affidavit
 - Iran Linked Business Certification (Affidavit).

Legal Aspects of Purchasing



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.**

Legal Recap - 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 Buy4Michigan.com	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	Food Service - MDE Process*
Board Approval	Board Approval	Board Approval
	Architect/Engineer Required*	

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

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 set long-term pricing



- **Advantages to using competitive bidding 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

Board Purchasing Policies

- **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**
 - Defines procurement objectives and best interests of school district.
 - Track Michigan Law
 - Law sets the floor for compliance – Board policies may be more restrictive.
 - Policies should be flexible – less may often be more effective.
 - Flexibility allows for change if new requirements arise.
 - Should require “reservation of rights” in all school district procurements.
 - Be cautious of requirement to bid services (unless required by law).

- **Discussion: How Detailed Should My Policies Be?**

Implementing the Law

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

How do we effectively put policies into practice?

- **Annually review internal purchasing polices, 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.**

Implementing the Law

Compliance Issues

- **Transparency!**
- **Beware of Conflicts of Interest (real & perceived).**
- **Smell Test.**
- **Beware of “pushy” vendors.**
- **Have a process to review and approve all purchases.**
- **Checks and Balances**
- **Do NOT split purchases to satisfy bidding thresholds.**

Dealing with potentially unlawful or non-conforming purchase

- **Notify proper administrators and do not cover up.**
- **Contact legal counsel.**

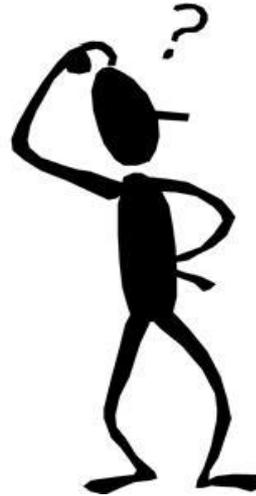
Purchasing Cards & Required Policies

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.

THANK YOU! Any Questions?



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