

REFERENCE COPY

FILE: DJF-AP1
Critical

EXPLANATION: PURCHASING

This procedure contains the most thorough summary of purchasing and purchasing preference laws available to school districts anywhere. MSBA has updated this procedure for accuracy and thoroughness.

1. In *Lakeside Roofing Co. v. Nixon*, 2012 WL 709276 (March 5, 2012), the U.S. District Court for the Eastern District of Missouri found the state's excessive unemployment statute unconstitutional. MSBA is removing all references to this law, §§ 290.550 - .580, RSMo.
2. MSBA has added to the "Legal Compliance" section reference to the federal and state laws governing the bidding of food service management. Federal law allows the state agencies overseeing the expenditures of federal nutrition funds to regulate the selection of food service management companies. See 7 C.F.R. § 210.16; 5 C.S.R. § 30-680.010. See http://dese.mo.gov/divadm/food/Food_Service_Management_index.html for more information on this process.
3. MSBA has also added to the "Legal Compliance" section reference to federal regulations that govern the purchase process using federal E-Rate funds. See 47 C.F.R. § 54.503.
4. Under "Purchasing Preferences," MSBA has added references to federal regulations that require the district to purchase, to the maximum extent practicable, domestic commodities or products for its nutrition program. See 7 C.F.R. 210.21; 220.16.
5. MSBA has also added a section under "Exceptions to the Regular Competitive Purchasing Process" on contracting for the services of a real estate broker. The Missouri Sunshine Law allows districts to discuss the sale, purchase or lease of real estate in closed session when public knowledge of the transaction might adversely impact the deal. This allows districts, for example, to act as a silent purchaser and obtain the benefit of the market price by not disclosing their identities until the closing. However, if the district must publicly bid for real estate broker services or the services of other professionals necessary to purchase or sell property, such as a building inspector, the district might lose the necessary confidentiality. For that reason, MSBA has added an exception for limited circumstances.

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MSBA recommends that copies of this document be routed to the following areas because the content is of particular importance to them. The titles on this list may not match those used by the district. Please forward copies to the district equivalent of the title indicated.

X	Board Secretary	X	Business Office		Coaches/Sponsors
	Facility Maintenance	X	Food Service		Gifted
	Human Resources		Principals		Library/Media Center
	Health Services		Counselor		Special Education
	Transportation		Public Info/Communications		Technology

PURCHASING

The district operates using funds collected from taxpayers for the benefit of the district's educational program, and it is imperative that all Board members and district employees strictly adhere to district policies and procedures when making purchases for the district.

Definitions

Competitive Bidding – A process of obtaining products or services where the district contacts providers or advertises, and interested providers submit offers or sealed bids from which the district chooses.

Competitive Negotiation – A process of obtaining a contract for products or services where the district contacts providers or advertises a request for proposals (RFP) detailing the scope, specifications, terms and conditions of the proposed contract and the criteria on which the proposals will be analyzed, then negotiates separately with each responsive provider to award the contract.

Debarred – Exclusion from state or federal government contracting and subcontracting for products or services.

Lowest or Best Bid or Offer – The provider with the best product or service based on district criteria that may include price, value, quality of product, history of performance, recommendations and other qualities important to the district.

Products – All physical property other than real estate including, but not limited to, supplies, books, furniture, machinery and equipment.

Provider – A vendor of products or an independent contractor providing services to the district.

Purchase – Obtaining or procuring products or services for the district in exchange for money or anything of value.

Purchasing Card – A credit card in the district's name on which the district has placed automatic restrictions such as the amount that can be charged per day, where the card may be used or the type of purchases that can be made with the card.

Services – All providers of labor or professional expertise other than that provided by district employees in the scope of their duties including, but not limited to, services such as construction, auditing, bond underwriting, consulting, janitorial services and food services.

Purchasing Supervision

The chief financial officer will serve as the district's purchasing officer or will designate a purchasing officer. The district purchasing officer will supervise district purchasing and may authorize purchases on behalf of the district that conform to the Board-adopted budget.

General Rules

1. All funds received by district staff on behalf of the district shall be deposited in district accounts. All funds deposited with the district, regardless of source, are considered district funds. Any purchases made with these funds must comply with district policies and procedures.
2. Although buildings, departments and divisions are allocated budgets for a given period, the expenditure of those budgetary amounts is still subject to law and district policies and procedures.
3. No contract will be entered into or bill paid without the proper documentation and ~~without~~ an affirmative vote from a majority of the whole Board. Even without a contract, no purchase that may exceed \$25,000 will be made without prior Board approval, unless in accordance with emergency provisions.
4. Regardless of the purchase method used, the district will select the lowest or best bid or offer. The district reserves the right to waive minor technical defects in a bid, reject any and all bids, reject any part of a bid, advertise for new bids, or make the purchase on the open market if the product or service can be obtained at a better price. If the scope of the purchase changes substantially, the district will rebid the product or service unless otherwise provided in this procedure.
5. Purchases may only be made through a purchase order, credit or purchasing card, or through petty cash, when appropriate. In rare circumstances when one of these methods of payment is not available, the district may reimburse an employee for a purchase made with the employee's personal funds. Employees should contact the district business office prior to making a purchase outside the authorized methods to ensure reimbursement.
6. All purchases must receive approval from the principal or other appropriate supervisor responsible for the budget code from which the purchase is made. The following items require additional approval prior to making the purchase, regardless of the cost:
 - ▶ Computer hardware and software must be approved by the district's technology director.

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- ▶ Materials purchased with grant funds must be approved by the person designated as the grant administrator.
 - ▶ Construction or maintenance of district facilities must be approved by the district's facilities director.
 - ▶ The purchasing officer must approve travel expenses such as airline tickets and hotel reservations.
7. All purchases must be attributed to a budget code, and funds must be available in that code prior to making the purchase.
 8. If the requested expenditure does not fit into a budget code or would go beyond the approved amount in that budget code, the request will be forwarded to the superintendent's office for review. If the superintendent determines that the request is reasonable but will require an amendment to the current budget, the superintendent will include the request as an agenda item at the next Board meeting.
 9. All purchases must be appropriately documented consistent with auditing guidelines.
 10. District staff will provide the district's tax-exempt letter to vendors before making any purchase that may be taxed.
 11. Purchase orders will expire within three months of the date of issuance if not redeemed.

Competitive Purchasing

District staff will research all purchases and compare prices prior to making decisions regarding the expenditure of district funds. Unless otherwise addressed in this procedure, employees are expected to contact multiple providers before making a purchasing decision under \$3,000.

If the estimated expenditure is more than \$3,000 but less than \$15,000, the employee authorized to make the purchase must:

1. Notify the purchasing officer of the needed purchase. The purchasing officer may send electronic notices of the proposed purchase to all providers on the district provider list. The purchasing officer may decide to directly conduct or oversee the purchase or allow the authorized employee to conduct the purchase.

2. Obtain at least three bids from providers. The employee may solicit bids directly from providers and may utilize bids received by fax, telephone, e-mail and catalog comparison.
3. If fewer than three providers sell or provide the service or product, document that fact and consult the available provider(s).
4. Provide the purchasing officer **with** the proper documentation, including documentation of which provider was chosen and the reasons for selecting that provider.

If the estimated expenditure is \$15,000 or more, the purchase will be made after receiving sealed bids through the purchasing officer.

1. The district employee authorized to make the purchase must first notify the purchasing officer of the purchasing need. The purchasing officer will directly conduct or oversee the purchase.
2. If the expenditure is for construction, the district will follow the bidding requirements of the law. Otherwise, at least five business days before the bids are to be opened, the purchasing officer will advertise the proposed purchase in a newspaper or through an electronic medium available to the general public and post notice of the proposed purchase in the same location as postings for School Board meetings. The purchasing officer will send electronic notices of proposed purchases to all businesses on the district's provider list.
3. The purchasing officer may also solicit sealed bids directly from providers.
4. It is the provider's responsibility to ensure that bids are received by the district no later than the appointed date and hour. Late bids will not be considered and will be returned unopened to the bidder.
5. The purchasing officer or designee will publicly open all bids received and will maintain all documentation of the purchase, including which provider was chosen and the reasons for selecting that provider.

Changing Specifications without Rebidding

Except as required by law, such as when bidding construction services, the district may change the scope of the purchase and accept a provider's offer without rebidding the purchase when bids received are unreasonable, have unacceptable terms and conditions, are noncompetitive, or when the low bid exceeds available funds. The purchasing officer must first determine in writing that time or other circumstances will not permit the delay required to resolicit competitive bids. Each responsive bidder who submitted a bid under the original solicitation must be notified of the change

and given a reasonable opportunity to modify his or her bid and submit a best and final bid. In cases where the bids received are noncompetitive or the low bid exceeds available funds, the ultimate amount agreed upon must be lower than the lowest rejected bid of any responsive bidder under the original solicitation.

Exceptions to the Regular Competitive Purchasing Process

1. Competitive Negotiation

The district may purchase products or services through an RFP if the purchasing officer determines that the purchase requires competitive negotiations rather than competitive bidding. Requests for proposals will be advertised and solicited in the same manner as competitive bids, depending on the anticipated cost.

The district will select the lowest or best offer as determined by the evaluation criteria established in the RFP and any subsequent negotiations. In determining the lowest or best offer, negotiations may be conducted with responsive providers for the purpose of understanding and clarifying the proposal and verifying that the proposal responds to the district's needs. All providers submitting proposals shall be accorded fair and equal treatment with respect to any opportunity for negotiation and subsequent revision of proposals. Revisions may be permitted after submission and before award for the purpose of obtaining best and final offers. The purchasing officer shall have the right to reject any or all proposals and advertise for new proposals or purchase the required products or services on the open market if they can be obtained at a better price.

2. Single Source Purchases

The purchasing officer may waive the requirement of competitive bids or proposals when he or she determines in writing that there is only a single feasible source for the purchase. Immediately upon discovering that other feasible sources exist, the purchasing officer shall rescind the waiver and proceed to procure the products or services through the competitive process as described in this procedure. A single feasible source exists in any of the following circumstances:

- ▶ Products or services are proprietary and only available from the manufacturer or a single distributor.
- ▶ Based on past procurement experience, it is determined that only one distributor services the region in which the products or services are needed.

- ▶ Purchases are available at a discount from a single distributor for a limited period of time, and the discount is significant based on the current market price and/or the last price paid for the product or service.
- ▶ Specific parts or authorized maintenance must be utilized to maintain validity of a warranty.
- ▶ The services of a particular provider are unique, such as speakers on a particular topic or authors.

If the estimated expenditure is \$3,000 or more, the purchasing officer shall post notice of the proposed purchase in the same location as postings for School Board meetings for at least five business days prior to the purchase. If the estimated expenditure is \$15,000 or more, the purchasing officer will advertise the proposed purchase in a newspaper or through an electronic medium available to the general public, ~~as well as~~ and posting notice of the proposed purchase in the same location as postings for School Board meetings for at least five business days prior to the purchase. In addition, district staff will send electronic notices of proposed purchases to all providers on the district provider list.

The requirement for notice and advertising may be waived if not feasible due to the purchase being available at a discount for only a limited period of time.

3. **Approved Providers**

In some circumstances where products and services are routinely needed, the purchasing officer may competitively bid or negotiate for the product or service for use throughout the school year, based on past usage of the product or service. Such circumstances include, but are not limited to, the purchase of food, textbooks, office supplies or services such as bus maintenance or plumbing. The purchasing officer will use the single source purchasing process for unique products or services. Once a provider has been approved, district employees may purchase the designated products or services from the approved providers without additional competitive bidding.

Before designating approved providers, the purchasing officer will first determine that the district will receive quality products and services from the providers at a reasonable cost to the district. The purchasing officer will review and redesignate approved providers annually to ensure that the prices of the products and services provided remain competitive. Textbook providers will only be designated as approved providers if all statutory requirements are met. Approved providers may be designated at any time.

4. Cooperative Purchasing

Cooperative purchasing should be utilized when it is determined to be to the financial advantage of the district. Before joining a cooperative purchasing program, the purchasing officer will conduct an analysis to determine whether the cooperative purchasing program will result in a cost savings to the district based on the district's history of expenditures. This analysis will be conducted on an annual basis to determine whether the district should continue to participate in the program.

5. Real Estate Brokers and Other Real Estate Services

In situations where the district will discuss or make decisions regarding the lease, purchase or sale of real estate in closed session as allowed by law, the district is not required to publicly advertise and seek sealed bids for the services of a licensed real estate broker or other services incident to the sale, regardless of the ultimate cost of the service provided. Instead, the purchasing officer will contact at least two service providers to obtain bids or quotes for services and make a recommendation to the Board, or the district may contract with a real estate broker or other service provider that has previously provided services to the district. This exception does not apply to services required to be publicly bid by law, such as construction services, or other services for which there is a specified selection process in law or policy, such as architectural, engineering and land surveying services.

6. Emergency Situations

Unless required by law, the superintendent may waive the requirement of competitive bids or proposals when he or she determines that there exists a threat to life, property, public health, or public safety or when immediate expenditure is necessary in order to protect against further loss of or damage to property, or to prevent or minimize serious disruption in services. If an employee utilizes this exception, he or she will contact the district's purchasing officer and the superintendent immediately to explain the situation.

Emergency purchases shall be made with as much competition as is practical under the circumstances, which may include calling known providers to obtain a quote or e-mailing vendors on the provider list and requiring an immediate response. Emergency purchases will only be utilized to purchase those products or services that are necessary to alleviate the emergency.

Leasing, Renting or Lease-Purchasing

Lease, rent or lease-purchase arrangements are subject to competitive bidding requirements in the same manner as other purchases. The Board may purchase apparatus, equipment and furnishings

by entering into lease-purchase agreements with providers. Any agreement that results in school district ownership of the leased object must contain a provision that allows the district an option to terminate the agreement on at least an annual basis without penalty. All expenditures related to lease-purchase agreements shall be considered expenditures for capital outlay.

Legal Compliance

In addition to the bidding requirements of this procedure, the district will comply with all laws with respect to acquiring products and services including, but not limited to, the following:

1. All construction projects that may exceed an expenditure of \$15,000 shall be advertised in a newspaper of general circulation and competitively bid, in accordance with law, and may also be advertised in business, trade or minority newspapers or using other modes of communication such as the district's website. Bid specifications and contracts for construction projects will include all elements required by law including, but not limited to, prevailing wage, mandatory training, ~~excessive unemployment restrictions~~, mandatory affidavits regarding the employment of authorized labor, and bonding requirements when applicable. See §§ 107.170, 177.086, 285.530, 290.210 - .340, ~~290.550 - .580~~, 292.675, RSMo.
2. All purchasing of architectural, engineering or land surveying services must be advertised, bid and selected in accordance with Board policy and law. See §§ 8.285 - .291, RSMo.
3. Construction management services must be advertised, bid and selected in accordance with Board policy and law. See §§ 8.675 - .687, RSMo.
4. The district must competitively bid auditing services and select an auditor who meets the qualifications set by the Department of Elementary and Secondary Education (DESE). See 5 C.S.R. 30-4.030.
5. Health and life insurance contracts will be competitively bid at least every three years. See § 67.150, RSMo.
6. General liability and other forms of insurance contracts will be competitively bid at least every six years. See § 376.696, RSMo.
7. Depositories of district funds will be competitively bid at least every five years. See §§ 165.201- .291, RSMo.
8. **The selection of food service management companies will be made in accordance with bidding requirements in state and federal law. See 7 C.F.R. § 210.16; 5 C.S.R. § 30-680.010.**

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9. When purchasing services using federal E-Rate Funds, the district will comply with federal law detailing the competitive bidding process. See 47 C.F.R. § 54.503.
10. Transactions with School Board members or employees, or businesses they own, will only be conducted as required by law and Board policy. See §§ 105.454, .458, 171.181, RSMo.
911. As a condition for the award of a contract to provide the district services in excess of \$5,000, the provider must submit a sworn affidavit and documentation affirming enrollment in E-Verify and stating that the provider does not knowingly employ any person who is not authorized to work in the United States. See § 285.530, RSMo.

Purchasing Preferences

The district will comply with all purchasing preference requirements, in accordance with law.

1. When contracting for any job or service, the district will give preference to Missouri businesses, or businesses that maintain Missouri offices or places of business, when the quality of performance promised is equal to or better than and the price quoted is the same as or less than that of the other responsive providers. See § 34.073, RSMo.
2. The district will give preference to all commodities manufactured, mined, produced or grown within the state and to all Missouri firms, corporations or individuals that supply commodities when quality and price are approximately the same. See § 171.181, RSMo.
3. The Board encourages district staff to purchase products manufactured, assembled or produced in the United States of America. See § 34.353, RSMo.
4. The district will purchase, to the maximum extent practicable, domestic commodities or products for its nutrition program. "Domestic commodity" means an agricultural commodity that is produced in the United States of America, and "domestic product" means a food product that is processed in the United States of America substantially using agricultural commodities that are produced in the United States of America. See 7 C.F.R. §§ 210.21, 220.16.
5. When contracting for any job or service, the district will give a three-point bonus preference to service-disabled veteran businesses that are Missouri businesses or businesses that maintain Missouri offices or places of business. See § 34.074, RSMo.
56. When purchasing food or beverages to be processed or served in a building or room owned or operated by the district, the Board will give preference to those that contain a higher level of calcium if they are equal or lower in price and of the same type and nutritional quality.

This consideration is in addition to any requirements of the U.S. Department of Agriculture under the National School Lunch Program or the School Breakfast Program. See § 34.375, RSMo.

67. When purchasing appliances with all or a portion of state funds, the appliance must have earned the Energy Star under the federal Energy Star program, unless exempted by the commissioner of the Office of Administration. See § 8.305, RSMo.
78. When purchasing coal for fuel purposes, the district must purchase coal mined in the state of Missouri or an adjoining state, if the cost is not greater than the cost of coal mined in any other state or states, including the cost of transportation. See § 34.080, RSMo.
89. Employees responsible for the purchase of cleaning products will consult DESE guidelines on environmentally friendly products prior to purchase. See § 161.365, RSMo.

Provider Lists

The purchasing officer or designee will maintain lists of providers interested in receiving electronic notices of proposed district purchases. Any provider may request to be added to the list. It is the provider's responsibility to update contact information.

The purchasing officer will not include providers who have been suspended or debarred at the state or federal level, and the purchasing officer will remove providers when the district discovers that the provider has been suspended or debarred. The purchasing officer may remove providers from the provider list if they have not submitted a bid or proposal in more than one year or have proven to be unreliable or unqualified. The purchasing officer will attempt to notify removed vendors using the last known e-mail address.

Debarred or Suspended Providers

The district will not do business with providers who have been suspended or debarred on a state or federal level, unless the superintendent authorizes the transaction and provides the Board written justification. If the district is currently under contract with a provider who becomes suspended or debarred, the district will comply with all legal obligations to the provider, but will not do business with the provider in the future until the provider is no longer suspended or debarred or the superintendent approves the purchase in writing.

The purchasing officer will monitor the state and federal information regarding suspension and debarment and will immediately notify staff members if a provider with whom the district regularly does business is suspended or debarred. Before making purchasing decisions, district staff will consult the purchasing officer for confirmation that the desired provider is in good standing.

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An employee may make a written request to the superintendent to purchase from a suspended or debarred provider if the provider is a single-source provider or there are other extenuating circumstances. The written request must include the specific reasons the district should continue to do business with the provider.

Purchase Documentation

Documentation related to purchases must be maintained in accordance with the Missouri Secretary of State's retention manual and maintained in a centralized location so that there is a clear audit path linking the solicitation, evaluation, award and payment. When applicable, documentation should include:

1. Bid specifications.
2. Newspaper advertisements or posted notices.
3. List of providers contacted.
4. Original or copy of each written bid received.
5. Bid record/tabulation summary sheets.
6. Correspondence concerning the purchase.
7. Evaluation report, including an explanation if the order is awarded to anyone other than the low bidder.
8. Description of the emergency condition that existed if bids are obtained due to emergency conditions.
9. Description of the single feasible source purchase.
10. An explanation if the order is awarded to a non-Missouri manufacturer or service provider.

Receiving Products

All district buildings will have a designated receiving area where all products are delivered. Each building supervisor/administrator will designate two employees who will sign for products received at that building. An employee will not sign for receipt of a product that the employee requisitioned or ordered. Therefore, all employees must notify the employees designated to receive products when an item is ordered. However, if there is a question as to whether the product was ordered or there

is a mistake in the order, the employee ordering the product will be consulted prior to consenting to the delivery. **The designated employee will verify that sales tax was not charged before giving consent to a delivery.**

Within one business day of receipt of a product, the employee who ordered it will inspect the product to ensure that the district received the appropriate quality and quantity of the product, that the product was delivered in a timely manner and that the price and quantity on the invoice matches the receipt. If the product is acceptable and the purchase was made by purchase order, the employee who ordered it will send proof of receipt to the purchasing officer so that the purchase order can be paid. If a partial shipment is received, the employee will send the receipt to the purchasing officer and will include notification that the entire order has not been received. If the purchase was made by credit or purchasing card, the employee issued the card will submit the receiving slip to the purchasing officer with the card statement. If the statement has already been paid prior to receipt, the employee issued the card will submit the receiving slip to the central office for documentation.

If the product is not what was ordered, the employee who ordered it will contact the provider immediately for correction. If the product cannot be replaced or the error corrected before the expiration of the purchase order, the employee will notify the purchasing officer immediately so that the first purchase order is canceled and a new purchase order is issued. If the provider refuses to correct the error, the employee will contact the purchasing officer immediately so that payment can be withheld or a protest filed with the credit or purchasing card issuer.

The building supervisor/administrator will designate one or more employees to verify all products received over the summer or in other situations where the employee who ordered a product is absent for an extended period of time. The person(s) designated will stand in place of the person ordering the product and perform the duties detailed above. The designated person(s) will attempt to notify the person who ordered the product, in addition to the purchasing officer, if there are any concerns.

All products received over the summer or in other situations where employees who ordered products are absent for an extended period of time will be stored in a secure, locked location and may only be removed by the employees who ordered the products or upon direction of the building supervisor/administrator or designee.

Receiving Services

In general a service provider will only be paid after the employee who requested the service verifies that the service has been rendered in accordance with the specifications. Exceptions may be made for purchases such as membership dues, registration fees and travel expenses such as airline tickets. Employees will contact the purchasing officer if there are concerns regarding the quality of the service provided or if the service is not completed in a timely manner.

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Payment

Because by law the Board must approve all bills, the purchasing officer will work with regular providers to arrange for a billing cycle that allows for official Board approval before payment, and yet protects the district from late fees or interest payments.

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Note: The reader is encouraged to review policies and/or forms for related information in this administrative area.

Implemented: FIELD(AdoptDate)

Revised:

FIELD(DistrictLocationLine)