Procurement

Governed by:

1) Federal Law
2) State Law
3) ADE Rules and Regulations
4) Local School District Policy
5) Grant Language (Source of Revenue)
6) What Fund (Funds 1 – 8)
Procurement – ADE Child Nutrition

**FIN-14-024 - dated 9/5/13:** Procurement of a Food Service Management Company Services

**FIN-09-069 - dated 4/17/09:** Purchasing Cooperatives (and other resources available to assist with procurement in federal child nutrition programs)

**FIN-09-071 - dated 4/28/09:** Purchasing and Bidding Requirements for Commodities
“School Purchasing and Bid Laws”

Nathan Barber
July 25, 2014
SOME PROCUREMENT LAWS MAY NOT APPLY TO ARKANSAS PUBLIC SCHOOL DISTRICTS

Act 13 of 2007

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 13 of the Regular Session

State of 1 Arkansas
86th General Assembly A Bill
Regular Session, 2007 HOUSE BILL 1093
By: Representative Overbey

For An Act To Be Entitled
AN ACT TO INCLUDE AN ITEM INTO THE STATUTE CONCERNING PURCHASES EXEMPTED FROM SOLICITING BIDS; AND FOR OTHER PURPOSES.

Subtitle
TO INCLUDE AN ITEM INTO THE STATUTE CONCERNING PURCHASES EXEMPTED FROM SOLICITING BIDS.
Act 13 (cont.)

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 14-22-106 is amended to read as follows:

Purchases exempted from soliciting bids.

14 = Local Government, Chapter 22 = County Purchasing Procedures, 106 = Purchases exempted from soliciting bids.

The following listed commodities may be purchased without soliciting bids:

1. Perishable foodstuffs for immediate use;
2. Unprocessed feed for livestock and poultry;
3. Advanced emergency medical services provided by a nonprofit corporation and proprietary medicines when specifically requested by a professional employee;
4. Books, manuals, periodicals, films, and copyrighted educational aids for use in libraries and other informational material for institutional purposes;
5. Scientific equipment and parts therefore;
6. Replacement parts and labor for repairs of machinery and equipment;
7. Commodities available only from the federal government;
(8) Any commodities needed in instances in which an unforeseen and unavoidable emergency has arisen in which human life, health, or public property is in jeopardy. However, no such emergency purchase shall be approved unless a statement in writing shall be attached to the purchase order describing the emergency necessitating the purchase of such commodity without competitive bidding;

(9) Utility services the rates for which are subject to regulation by a state agency or a federal regulatory agency;

(10) Sand, gravel, soil, lumber, or used pipe, or used steel;

(11) Used or secondhand motor vehicles, machinery, or equipment, except that a used or secondhand motor vehicle that has been under lease to a county when the vehicle had fewer than ten thousand (10,000) miles of use may not be purchased by the county when it has been used ten thousand (10,000) miles or more except upon competitive bids as provided for in this chapter;

(12) Machinery, equipment, facilities, or other personal property purchased or acquired for, or in connection with, the securing and developing of industry under or pursuant to the provisions of Arkansas Constitution, Amendment 49 [repealed], of § 14-164-201 et seq., or of any other provision of law pertaining to the securing and developing of industry;

(13) Registered livestock to be used for breeding purposes;

(14) Motor fuels;

(15) Motor vehicles, equipment, machinery, material, or supplies offered for sale at public auction or through a process requiring sealed bids; and

(16) All goods and services that are regularly provided to state agencies and county government by the Department of Correction’s various penal industries.

APPROVED: 1/25/2007
As used in this subchapter, unless the context otherwise requires:

(1) "Commodities" means all supplies, goods, material, equipment, machinery, facilities, personal property, and services, other than personal and professional services, purchased for or on behalf of the school district;

(2) "Open market purchases" means those purchases of commodities by any purchasing official in which competitive bidding is not required;
Definitions (Cont.).

(3) "Purchase" means and includes not only the outright purchase of a commodity but also the acquisition of commodities under rental-purchase agreements, lease-purchase agreements, or any other type of agreements whereby the school district has an option to buy the commodity and to apply the rental payments on the purchase price thereof;

(4) "Purchase price" means the full sale or bid price of any commodity without any allowance for trade-in; and

(5) "Purchasing official" means the board of directors of any school district or a lawfully designated agent of the school district with authority to contract or make purchases on behalf of the school district.
6-21-302. Penalty.

- A violation of the provisions of this subchapter shall be a Class C misdemeanor.
6-21-303. Rules and regulations.

(a) The board of directors of each school district shall prescribe the method of soliciting bids by regulation and may adopt other rules and regulations governing the procurement of commodities.

(b)(1)(A) Each school district, according to its established reimbursement policy, shall provide to each prekindergarten through sixth-grade teacher in each fiscal year the greater of twenty dollars ($20.00) per student enrolled in the teacher's class for more than fifty percent (50%) of the school day at the end of the three (3) months of the school year or five hundred dollars ($500) per classroom for the teacher to apply toward the purchase of related commodities for use by that teacher in his or her classroom or for class activities.

(B) The teacher must provide to the school district receipts documenting any purchase.
(C) Each fiscal year, the superintendent of each school district shall provide a statement to the State Board of Education attesting to the district's compliance with this section and shall attach any supporting documents that the state board may require by regulation.

(2) The board of directors of each school district shall adopt reasonable procedures for teachers to draw from or be reimbursed from the discretionary fund pursuant to this subsection.

(c) The Department of Education shall have the authority to grant a waiver of the requirements of subsection (b) of this section if a school district requests a waiver and the school district is in fiscal distress.
6-21-304. Manner of making purchases.

- (a) (1) All purchases of commodities by any school district, except those specifically exempted by § 6-21-305 shall be made as follows:

- (A) In each instance in which the estimated purchase price shall equal or exceed ten thousand dollars ($10,000), the commodity shall be procured by soliciting bids, provided that the purchasing official may reject all bids and may purchase the commodity by negotiating a contract. If the purchasing official, after rejecting all bids, determines that the purchase should be made by negotiation, then each responsible bidder who submitted a bid shall be notified of the determination and shall be given a reasonable opportunity to negotiate;

- (B) Open market purchases may be made where the purchase price is less than ten thousand dollars ($10,000); and

- (C) No purchasing official shall parcel or split any item or items with the intent or purpose to enable the purchase to be made under a less restrictive procedure.
6-21-304. Manner of making purchases (Cont.).

2)(A) In soliciting bids for the purchase of a commodity, a school district or a person or organization acting on behalf of a school district shall not impose qualifications or specifications that unreasonably restrict competition for the purchase of a commodity.

(B)(i) As used in this subdivision, "specifications" means a technical description or other description of the physical or functional characteristics of a commodity.

(ii) Specifications shall not include the name or identity of any specific vendor.

3)(A) A school district shall notify in writing all actual or prospective bidders, offerors, or contractors who make a written request to the school district for notification of opportunities to bid.

(B) Notice under subdivision (a)(3)(A) of this section shall be provided in sufficient time to allow actual or prospective bidders, offerors, or contractors to submit a bid or otherwise appropriate response.

4)(A) Any competitive bid submitted to a school district in response to a solicitation for bids for the purchase of a commodity shall be accompanied by a form substantially similar to the following that is signed and notarized by the agent of the bidder:
6-21-304. Manner of making purchases (Cont.).

"NAME OF SCHOOL DISTRICT

NAME OF COUNTY

I, ____________, hereby state:

- (1) I am the duly authorized agent of __________, the bidder submitting the competitive bid which is attached to this statement, for the purpose of certifying the facts pertaining to the existence of collusion among and between bidders and state officials, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the awarding of any contract pursuant to the bid to which this statement is attached.
- (2) I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of the bid.
- (3) Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
  - (A) To any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding;
6-21-304. Manner of making purchases (Cont.).

- (B) To any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of the prospective contract; or
- (C) In any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the awarding of a contract.

- (4) I hereby guarantee that the specifications outlined in the bid shall be followed as specified and that deviations from the specifications shall occur only as part of a formal change process approved by the Board of Directors of the school district.

________________________
Signature

Subscribed and sworn to before me this ______ day of ______, 20____.

________________________
Notary Public"
(B) Any person determined to have made a false statement on the form prescribed by subdivision (a)(4)(A) of this section or any bidder who acts contrary to the provisions of the form after its agent has executed the form shall be guilty of a Class C misdemeanor.

(5)(A) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a school district contract may protest to the superintendent of the school district in accordance with procedures established by the board of directors of the school district.

(B) Protest procedures shall include, at a minimum, provisions addressing the following:
(i) The superintendent's authority to settle and resolve a protest of an aggrieved person concerning the solicitation or award of a contract;

(ii) Submission of a protest in writing within seven (7) calendar days after the aggrieved person knows or should have known of the facts giving rise to the protest;

(iii) The provision of reasonable notice to all persons involved and reasonable opportunity for those persons to respond to the protest issues;

(iv) The issuance of a prompt decision in writing that states the reasons for the action taken which is provided to all interested parties;

(v) The impact of a protest on continuing with the solicitation or award of the school district contract pending the resolution of the protest; and

(vi) The award of costs with regard to successful protests.

(C) A decision on a protest under this section shall be final and conclusive.
6-21-304. Manner of making purchases (Cont.).

(b)(1) The local school board shall have exclusive jurisdiction for the purchase of Types A, B, C, and D school buses.

(2) The Department of Education shall have responsibility for drawing up the minimum specifications for all school buses.

(3) An advisory committee made up of ten (10) school administrators representing all sizes of schools and all areas of the state shall assist the department in drawing up specifications for school buses.

(4)(A) A local school board may request the State Purchasing Director to solicit bids for school buses on its behalf.

(B) If a request is made, the Office of State Purchasing shall take bids from all school bus body and chassis manufacturers doing business in Arkansas.
6-21-304. Manner of making purchases (Cont.).

(5) If a local school board chooses to purchase school buses other than through the office, the board shall forward no later than twenty (20) days after the bid award the following documents to the office:

- (A) A copy of all the bid specifications;
- (B) A list of invited bidders;
- (C) Copies of all correspondence sent out by the school district to bidders and all correspondence received by the school district from bidders;
- (D) A complete bid tabulation; and
- (E) A copy of the bid award.
(c) For the purposes of this section:

(1) A "Type A school bus" is a conversion or body constructed upon a van-type compact truck or a front-section vehicle with a gross weight rating of ten thousand pounds (10,000 lbs.) or less and designed for carrying more than ten (10) persons;

(2) A "Type B school bus" is a conversion or body constructed and installed upon a van or front-section vehicle chassis or stripped chassis with a vehicle weight rating of more than ten thousand pounds (10,000 lbs.) and designed for carrying more than ten (10) persons. Part of the engine is beneath or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels;
(c) For the purposes of this section (Cont):

(3) A "Type C school bus" is a body installed upon a flat back cowl chassis with a gross vehicle weight rating of more than ten thousand pounds (10,000 lbs.) and designed for carrying more than ten (10) persons. All of the engine is in front of the windshield. The entrance door is behind the front wheels; and

(4) A "Type D school bus" is a body installed upon a chassis with the engine mounted in the front, midship, or rear with a gross vehicle weight rating of more than ten thousand pounds (10,000 lbs.) and designed for carrying more than ten (10) persons. The engine may be behind the windshield and beside the driver's seat, at the rear of the bus, behind the rear wheels, or midship between the front and rear axles. The entrance door is ahead of the front wheels.
6-21-305. Exemptions from bidding requirements.

(a) The following commodities may be purchased without soliciting bids:

(1)(A) Commodities in instances of an unforeseen and unavoidable emergency.

(B) Provided, no emergency purchase shall be approved by the superintendent unless a statement in writing shall be attached to the purchase order describing the emergency necessitating the purchase of the commodity without competitive bidding;

(2) Commodities available only from the federal government;
6-21-305. Exemptions from bidding requirements (Cont.).

(3) Utility services, the rates for which are subject to regulation by a state agency or a federal regulatory agency;

(4) With the exception of used school buses, used equipment and machinery; and

(5) Commodities available only from a single source.

(b) However, the purchasing official must determine in writing that it is not practicable to use other than the required or designated commodity or service, and a copy of this statement shall be attached to the purchase order.
• Single Source Justification

Commodities available only from a sole or single source should only be used when all other methods of contracting or purchasing are clearly not applicable. The superintendent or purchasing director may authorize the use of sole source purchases. The sole source justification document should be attached to the purchase order and maintained in the audit file.

The justification must clearly demonstrate that to contract otherwise would not be in the best interests of the district. The justification should fully address:

1. Why the service or product is needed
2. The methods used to determine that a lack of responsible/responsive competition exists for the service or product
3. How it was determined that the provider possesses exclusive capabilities
4. Why the service or product is unique
5. Whether or not there are patent or proprietary rights which make the required service a product unavailable from other sources
6. What the district would do if the provider/service product were no longer available
7. Any program considerations which make the use of a “sole source” critical to the agency
19-11-802 Annual statements of qualifications and performance data -- Restrictions on competitive bidding

(a) In the procurement of professional services, a state agency or political subdivision which utilizes these services may encourage firms engaged in the lawful practice of these professions to submit annual statements of qualifications and performance data to the political subdivision or may request such information as needed for a particular public project.

(b) The state agency or political subdivision shall evaluate current statements of qualifications and performance data of firms on file or may request such information as needed for a particular public project whenever a project requiring professional services is proposed.
(c) (1) The political subdivision shall not use competitive bidding for the procurement of legal, financial advisory, architectural, engineering, construction management, and land surveying professional consulting services.

(2) A political subdivision shall not use competitive bidding for the procurement of other professional services with a two-thirds (2/3) vote of its governing body.

(d) (1) A public school district that utilizes construction management services shall encourage construction management firms to submit to the school district annual statements of qualifications and performance data or may request such information as needed for a particular public project.
(2) The public school district shall evaluate current statements of qualifications and performance data on file with the school district or when submitted as requested whenever a project requiring professional services of a construction manager is proposed.

(3) The public school district shall not use competitive bidding for the procurement of professional services of a construction manager.

Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any commodities or services with one (1) or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.
The Interlocal Purchasing System (TIPS) / Texas-Arkansas Purchasing System (TAPS) Recognizes Wayne Davis Playgrounds As an Awarded Vendor For Playground Equipment and Supplies Contract #07121809 Effective Date through 12/18/09 – 12/18/12

Karen Whitaker Harvey Hohenberger Jr. Deputy Director TIPS/TAPS Executive Director Region VIII ESC Region VIII ESC

Visit www.tips-usa.com for details on this Awarded Vendor
What does this mean?

- That Arkansas governmental entities may utilize a purchasing agreement established by another governmental entity or established cooperative that has issued, reviewed and awarded a contract to a supplier where all the procurement laws of Arkansas were followed.
How do I know if a particular contract meets these requirements?

If a cooperative agreement is on the Office of State Procurement Contract Website, it has been through that review.

http://www.arkansas.gov/dfa/procurement/pro_contracts.html#coop

If it is not on the OSP website, the buying entity must review the solicitation documentation used by the originating entity/cooperative to ensure compliance with Arkansas laws.
State Buying Authority

- Office of State Procurement (OSP) has authority over the procurement practices of State Agencies only.
- Public Schools are allowed by law to purchase off the Statewide contracts, but are not mandated to do so.
- Utilizing state purchasing is a way for school districts, charters, and coops to make sure the cost is fair and reasonable.
Benefits of using a cooperative contract:

- Convenience
- Obtain advantages of volume purchases
- Combines qualities so that each entity will obtain the best value
- Reduces administrative costs of purchasing
Contracts of particular interest to K-12 already on OSP’s website

- Automated external defibrillators
- Automotive repair parts
- Computers
- Drug testing kits
- Laboratory supplies
- MRO Supplies
- Playground equipment
- Software LAR (Microsoft, Adobe, etc.)
- Wide area networking
Future OSP contract possibilities

- Lawn equipment
- School buses
- Green janitorial supplies
- Appliances
- Web application development (being discussed)
OSP receives frequent calls from schools across Arkansas seeking procurement guidance.

While we wish we could help you, we don’t know the statutes or rules that govern your procurements. Your rules are different than ours.

We can assist you in how to purchase off of any of the contracts listed on the OSP website.
1509 W. 7th Street
Little Rock, AR 72201
(south end of the Capitol, right off I-630)
501-324-9316

www.arkansas.gov/dfa/procurement

Contracts:
http://www.dfa.arkansas.gov/offices/procurement/contracts/Pages/default.aspx
Awarding Contract

- 22-9-201 Outlines what the bid documents must include and how the awarding of the contract is legally implemented.
Vendor Selection Process

- Must have written selection procedures
- Procedures must ensure all solicitations:
  - Include a clear, accurate description of technical requirements
  - Identify all requirements vendor must fulfill
  - Identify evaluation factors
  - Must indicate method of procurement
    - Competitive bids
    - Competitive proposals
    - Noncompetitive proposals
Noncompetitive proposals are appropriate only when:
- Goods or services are available only from a sole source
- There is a public emergency
- Award agency authorizes
- After soliciting a number of sources, competition is deemed inadequate
- Must perform cost analysis with every noncompetitive contract
  - Ensure reasonable price
  - Ensure competitive price
Vendor Selection Process

- Retain records to document:
  - Rationale for method of procurement
  - Selection of contract type
  - Contractor selection or rejection
  - Basis for contract price
Contract Administration

• Requirements
  o Must have written contracts or purchase order
  o Contract must clearly define deliverables
  o Describe services to be performed or goods to be delivered
  o Describe dates when services will be performed or goods delivered
  o Describe locations where services will be performed or good delivered
  o Describe numbers of students or teachers to be served (if applicable)
Contract Administration

- Must have a written invoice which includes:
  - Description of specific services delivered or goods received
  - Description of dates services performed
  - Description of the location of services received
  - Description of numbers of persons served
- Invoice must be reviewed and approved before payment.
A contract for supplies or equipment must include:

- A description of the items including brand and model number
- The number of items purchased
- The date of delivery
- Any associated service or maintenance agreements
- Any associated training agreements
- Any associated warranties
• Qualifying Expenditures for “5000”

• Capital Outlay

• Current Expenditures

• Dedicated Maintenance and Operation

• **Current Law:** 26-80-110 (Amended by ACT 105 of the 2nd Extraordinary Session of 2003)
26-80-110. Dedicated maintenance and operation millage.

(a)(1) Upon the approval of a majority of the qualified voters in the school district voting in the school election, the board of directors of each local school district may designate as dedicated maintenance and operation millage some of the school district's additional maintenance and operation millage that exceeds the uniform rate of tax.

(2) The approved tax shall be assessed, levied, and collected as provided by law for other school taxes.

(b) Any funds received from the collection of a dedicated maintenance and operations tax shall be used only for maintenance and operation purposes specifically approved by the majority of the qualified voters of the school district voting in the school election and for no other purposes than those that were stated on the ballot.

(c) Any levy of a dedicated maintenance and operation millage shall be limited as set forth in subsection (b) of this section and shall not exceed three (3) mills.

(d) Any levy of a dedicated maintenance and operation millage must be specified on the ballot, and that specification must list the purpose for which the dedicated maintenance and operation millage is levied.

(e) Dedicated maintenance and operation millage may not be used by a school district to comply with the uniform rate of tax levy.

SAMPLE BALLOT I (Cont.)

VOTE ON MEASURE BY PLACING AN “X” IN THE SQUARE OPPOSITE THE MEASURE EITHER FOR OR AGAINST

For Tax ................................................................. (  )
Against Tax ............................................................. (  )

___________________ Total Mills School Tax

This represents no change from the previous year. The total tax levy proposed above includes ________ for the maintenance and operation of schools, ________ dedicated maintenance and operation mills dedicated for ____________ purposes, and ________ mills for debt service previously voted as a continuing debt service tax pledged for the retirement of existing bonded indebtedness. The district may use surplus revenues produced each year by debt service millage for other purposes.

__________________________________________________________________

(Perforation)

LIST OF VOTERS NUMBER ________
(a)(1) For the purposes of this section, a school bus becomes a used school bus two (2) years after the date of issuance of the manufacturer's certificate of origin.

(2) If the body of the school bus is installed by an entity other than the manufacturer of the chassis, the school bus becomes a used school bus two (2) years after the date of issuance of the manufacturer's certificate of origin issued by the entity which installed the body on the chassis.

(b) Notwithstanding any other law to the contrary, used school buses purchased by public school districts in this state shall not be subject to the jurisdiction of the State Purchasing Director nor any competitive bidding procedures prescribed by law.
Purchase Of School Buses.

- School boards may purchase buses through OSP on state contract.
- School boards may request the OSP to take bids on their behalf.
- If the district solicits the bids they must provide the OSP:
  1. A copy of the bid Specs
  2. List of bidders
  3. Any correspondence
  4. Bid tabulation
  5. Copy of bid award
(a) School buses purchased with loans from the Revolving Loan Fund must meet the prescribed minimum standards and regulations for school buses and must be owned and operated by the district purchasing them.

(b)(1) The purchase of school buses with loans from the fund shall be made upon competitive bids.

(2) Forms for bids shall be approved by the State Board of Education.

(3) The district shall advertise for bids by publication of notice in a newspaper having bona fide circulation in the county where the district is located, once a week for two (2) weeks, giving the date and place of opening bids.
• **6-19-114. Purchase of buses (Cont.).**

  • (4) The first publication of notice shall be not less than thirty (30) days from the date set for opening bids and awarding of contracts.

  • (c)(1) Any school district which shall desire that the board purchase buses for that school district, instead of making the purchase as provided in this section, may apply to the board to make the purchase for it.

  • (2) If the board shall receive within a sixty-day period application for the purchase of ten (10) or more buses from one (1) or more districts, the purchase shall, collectively, be made by the board as is provided in this section for advertising for and accepting bids by a school district, except that the advertisement for bids shall be in some newspaper having a statewide circulation.
Arkansas law is very specific

- $20,000 - $24,999:
  - Must advertise in newspaper minimum of one time (A.C.A. 22-9-203)
  - Sealed bids (A.C.A. 22-9-203)
  - Bids not opened until deadline for receipt (A.C.A. 22-9-203)
  - Bids not awarded until seven days after the first run in the paper (A.C.A. 22-9-203)
  - 5% bid bond or certified check (A.C.A. 22-9-203)
  - Successful bidder to provide a performance bond for 100% (A.C.A. 22-9-203)
  - Contractors must hold a valid Arkansas Contractor’s License (A.C.A. 17-25-101)
Arkansas law is very specific

- **$25,000 - $49,999:**
  - All listed on previous slide. (A.C.A. 22-9-203 & A.C.A. 17-22-101)
  - An Arkansas licensed engineer to design all aspects of the project that involve engineering (A.C.A. 22-9-101)

- **$50,000 - $74,999:**
  - All previously listed with the exception that bids must be advertised two times (A.C.A. 22-9-203)
    - 1 time per week
    -Cannot be awarded until 14 days after the first advertisement
Arkansas Law is very specific

- $100,000 +:
  - All previously listed.
  - An Arkansas licensed architect must design the project. When an architect is employed for a project, the engineering requirements become the responsibility of the architect and properly licensed engineers must still be used. (A.C.A. 17-14-302 & 22-9-101)
CONSTRUCTION PROCESSES, STATUTES, RULES AND REGULATIONS

- All public schools shall meet the Arkansas Code pertaining to earthquake design for public structures. The design of structural elements of public buildings and structures shall be performed by a professional engineer registered in the State of Arkansas who is competent in seismic structural design according to current standards of technical competence. These requirements include all new construction, any addition to an existing facility that exceeds 4,000 square feet and any remodeling or repair of a building which when completed will increase the market value of the building by 100% or more.

- The “park and recreation facilities” of a school district are not included in this requirement. “Park and recreational facilities” shall mean any facilities, that are generally open structures and have three or fewer sides and are used for athletics, recreation or entertainment (i.e., pavilions, amphitheaters, and baseball dugouts).
CONSTRUCTION PROCESSES, STATUTES, RULES AND REGULATIONS (CONT.)

- School districts in Seismic Hazard Exposure Group III shall have non-structural interior components (such as bookshelves, light fixtures, shelving, hot water tanks, oxygen tanks, etc.) to meet earthquake resistant guidelines.

- Seismic Hazard Exposure Group III shall include the following counties: Clay, Greene, Craighead, Mississippi, Poinsett, Cross, Crittenden, St. Francis, Randolph, Lawrence, Jackson, Woodruff, and Lee. (A.C.A. 12-80-102, as amended by Act 1485 of 1999)

- Architects and engineers must be hired by considering and evaluating their “annual statement of qualifications,” which outlines their background, experience, prior work and personnel. Procuring these services by competitive bidding is prohibited. (A.C.A. 19-11-801 through 805)
CONSTRUCTION PROCESSES, STATUTES, RULES AND REGULATIONS

- Bidding Requirements (Cont.):
  - In the event all bids submitted exceed the amount appropriated for the award of the contract, the district may negotiate an award of the contract with the apparent responsible low bidder, but only if the low bid is within 25% of the amount appropriated. (A.C.A. 22-9-203, as amended by Act 675 of 1999)

  - If all estimated costs of a project exceed $75,000, the bid documents shall contain statements, which encourage the participation of small, minority, and women business enterprises. (A.C.A. 22-9-203, as amended by Act 1310 of 1999).

  - A district may use alternates in the bid specifications on construction projects. No more than three alternates may be used. The alternates must be deductive. The alternates must be listed in numerical order. (A.C.A. 22-9-203, as amended by Act 921 of 2001)
Bond Requirements:
- A 5% bid bond or a certified check in the amount of 5% of the bid shall accompany all submitted bids on projects that exceed $20,000. (A.C.A. 22-9-203, as amended by Act 1309 of 1999)

- The successful bidder on all projects that exceed $20,000 shall provide the owner a performance bond for 100% of the contract amount. (Arkansas Code Annotated 18-44-503)
Sub-Contractor Construction Requirements:

- Any construction project that exceeds $20,000, the contractor must hold a valid Arkansas State Contractor’s License (A.C.A. 17-25-101). This statute also applies to sub-contractors that do work in excess of $20,000. Any general contractor’s contract that exceeds $50,000, all sub-contractors must be licensed contractors (A.C.A. 22-9-204)

- Any sub-trades contractor doing work in areas such as electrical, plumbing, HVAC, etc. must hold the required trade’s license from the State of Arkansas. Any of these contractors that do jobs that exceed $20,000 must also hold the State Contractor’s License.
6-21-403. Requirements generally.

(a) Public school districts shall provide textbooks and other instructional materials for all pupils attending the public schools of this state in grades kindergarten through twelve (K-12), inclusive, in all subjects taught in those grades, without cost to the pupils.

(b) School districts may select their own textbooks or instructional materials, or districts may select from the recommended state-approved list.

(c) Any materials purchased with state funds shall be consistent with the curriculum and educational goals established by the State Board of Education.
6-13-628. Purchases in small communities without bids.

Whenever any school in a school district in any county of this state having a population of less than six thousand (6,000), according to the most recent federal census, is located in a community in which there is only one (1) store selling school supplies or furnishings, the school district may purchase such supplies or furnishings from the store irrespective of any laws of this state regarding the taking of bids for school purchases or laws prohibiting the selling of supplies and furnishings to any school district by a member of the school district board of directors.
6-13-625. Liability insurance.

The boards of directors of the respective school districts of this state may, upon approval of the majority of the members thereof, purchase liability insurance to protect the individual members of the board of directors from legal liability for activities arising out of duties as a director, including liability arising out of alleged malfeasance, errors, omissions, wrongful acts not related to bodily injury or property damage, and other actions taken in the performance of their duties as directors. The board of directors may pay the premium on the liability insurance policy from funds belonging to the school district.
6-13-1023. Technology training center - Technology coordinators

- Education Service Cooperative . . . .

- (4) To provide member schools with information on technology standards and specifications;

- (5) To develop and coordinate a technology training center located at the education service cooperative;

- (6) To coordinate information with the Arkansas Public School Computer Network, the Instructional Microcomputer Project for Arkansas Classrooms, and the Governor's Technology Task Force so that member schools will be informed on technological activity in the state; and

- (7) To assist with requests for proposal development and bid analysis so that member schools will be better able to spend funds for technology.

(a) It is the policy of the state to promote and balance the objective of protecting integrity and facilitating the recruitment and retention of personnel needed by public educational entities.

(b) All board members, administrators, and employees, as defined herein, shall carry out all official duties for the benefit of the people of the community and the State of Arkansas and shall abide by the provisions of this chapter.

(c) It is the specific intent of this chapter to prohibit self-dealing in transactions between public educational entities and board members, administrators, or employees.
6-24-102. Definitions.

- Unless otherwise specifically stated herein, the term:

- (1) "Administrator" means any superintendent, assistant superintendent or their equivalent, school district treasurer, business manager, or other individual directly responsible for entity-wide purchasing;

- (2) "Board" means a local school board or other governing body of a public educational entity;

- (3) "Board member" means any board member, director, or other member of a governing body of a public educational entity;

- (4) "Board of Education" means the State Board of Education;

- (5) "Commodities" means all supplies, goods, material, equipment, computers, software, machinery, facilities, personal property, and services, other than personal and professional services, purchased for or on behalf of a public educational entity;
• **6-24-102. Definitions (Cont.)**

  • (6) "Contract" means any transaction or agreement for the purchase, lease, transfer, or use of real property or personal property and personal or professional services, including, but not limited to, motor vehicles, equipment, commodities, materials, services, computers or other electronics, construction, capital improvements, deposits, and investments;

  • (7) "Directly" or "directly interested" means receiving compensation or other benefits personally or to a business or other entity in which the individual has a financial interest;

  • (8) "Director" means the Director of the Department of Education or his or her designee;

  • (9) "Emergency purchase" means purchases mandated by unforeseen and unavoidable circumstances in which human life, health, or public property is in immediate jeopardy and the expenditure is necessary to preserve life, health, or public property;

  • (10) "Employee" means a full-time employee or part-time employee of a public educational entity;
6-24-102. Definitions (Cont.)

(11) "Family" or "family members" means:
   (A) An individual's spouse;
   (B) Children of the individual or spouse;
   (C) A child's spouse;
   (D) Parents of the individual or the spouse;
   (E) Brothers and sisters of the individual;
   (F) Anyone living or residing in the same residence or household with the individual or the spouse; or
   (G) Anyone acting or serving as an agent of the individual;

(12)(A) "Financial interest" in a business or other entity means:
   (i) Ownership of more than a five percent (5%) interest;
   (ii) Holding a position as an officer, director, trustee, partner, or other top level management; or
   (iii) Being an employee, agent, independent contractor, or other arrangement where the individual's compensation is based in whole or in part on transactions with the public educational entity.
6-24-105. School boards.

(a) **General Prohibition.** Except as otherwise provided, it is a breach of the ethical standards of this chapter for a board member to contract with the public educational entity the member serves if the board member has knowledge that he or she is directly or indirectly interested in the contract.

(b) **Family Members.** This chapter does not prohibit family members of board members from being employed by the public educational entity the board member serves if the board determines that the employment is in the best interest of the public educational entity.

(c) **Exceptions.**

(1) **Board Approval.**

(A) In unusual and limited circumstances, a public educational entity's board may approve a contract between the public educational entity and the board member or the member's family if the board determines that the contract is in the best interest of the public educational entity.
(B) The approval by the public educational entity's board shall be documented by written resolution after fully disclosing the reasons justifying the contract in an open meeting. The resolution shall state the unusual circumstances necessitating the contract and shall document the restrictions and limitations of the contract.

(C) Any board member directly or indirectly interested in the proposed contract shall leave the meeting until the voting on the issue is concluded, and the absent member shall not be counted as having voted.

(2) Independent Approval.

(A) If it appears the total transactions with the board member or a family member for a fiscal year total, or will total, five thousand dollars ($5,000) or more, the superintendent or other chief administrator of the public educational entity shall forward the resolution along with all relevant data to the Director of the Department of Education for independent review and approval. The resolution and other relevant data shall be furnished by certified mail with return receipt requested or other method approved by the State Board of Education to assure adequate notice of receipt by the Department of Education and to provide a record for the school sending the approval request.
(B) Upon review of the submitted data, the director shall, within ten (10) days of receipt of the resolution and other relevant data, approve or disapprove in writing the board's request.

(ii) The director may request additional information or testimony before ruling on a request. If additional data is needed for a proper determination, the director shall approve or disapprove the contract within ten (10) days of receipt of the additional requested data.

(iii) If the director does not respond to the public educational entity within the ten-day period or request additional time or data for a proper review of the contract, the contract shall be deemed to be approved by the director.

(C) If approved, the director shall issue an approval letter stating all relevant facts and circumstances considered and any restrictions or limitations pertaining to the approval. The director may grant the approval for a particular transaction or a series of related transactions. However, no approval shall be granted for a period greater than two (2) years.
6-24-105. School boards (Cont.).

- (D) No contract subject to the director's review and approval shall be valid or enforceable until an approval letter has been issued by the director or the director fails to respond to the public educational entity within the time periods specified in this section.

- (d) **Records.** The department and the public educational entity shall maintain a record and copy of all documentation relating to transactions with board members or members of their family.

- (e) **Providing false or incomplete information.** Any board member or other person knowingly furnishing false information or knowingly not fully disclosing relevant information necessary for a proper determination by the public educational entity or the director shall be guilty of violating the provisions of this chapter.

(a) The provisions of this chapter do not apply to emergency purchases.

(b) Emergency purchases shall only be used for the preservation of life, health, or public property, and shall not be used to substantially improve the condition of an asset prior to the emergency.

(c) Each public educational entity shall maintain records and copies of all documentation relating to and supporting a determination that transactions qualify as emergency purchases.

(d) Any person using emergency purchases to avoid the intent of this chapter shall be guilty of violating the provisions of this chapter.
6-24-111. Restrictions on employment of present and former administrators.

(a) (1) Unless written approval is granted by the Director of the Department of Education, it is a breach of the ethical standards of this chapter for administrators to be or become the employee, agent, or independent contractor of any party contracting with the public educational entity they serve.
(2) The director's approval letter shall be filed with and maintained by the public educational entity employing the administrator.

(b) Unless written approval is granted by the director, it is a breach of the ethical standards of this chapter for administrators to engage in selling or attempting to sell commodities or services to the public educational entity they served or were employed by for one (1) year following the date employment or service ceased.
6-24-112. Gratuities and kickbacks.

- (a) It is a breach of the ethical standards for any person to offer, give, or agree to
give any board member, administrator, or employee a gratuity or an offer of
employment in connection with any contract or transaction of a public educational
entity.

- (b) It is a breach of the ethical standards for any board member, administrator, or
employee to solicit, demand, accept, or agree to accept from another person or
entity a gratuity or an offer of employment in connection with any contract or
transaction of a public educational entity.

- (c) It is a breach of the ethical standards for any payment, gratuity, or offer of
employment to be made by or on behalf of a person or entity as an inducement for
the award of a contract or transaction with a public educational entity.

- (d) The State Board of Education shall issue specific rules and regulations
regarding educational or work-related travel, conventions, seminars, and other
benefits provided by vendors.
6-24-114. Administrative remedies applicable to administrators and employees.

(a) (1) The Department of Education may review alleged violations of this chapter. If the department reviews the allegations and the Director of the Department of Education determines that there is adequate evidence of a violation, the director may refer the allegations to the State Board of Education for review.

(2) Upon the state board’s approval to review the alleged violation and after reasonable notice in writing to all parties, the board may schedule a hearing to determine whether an administrator or employee has knowingly violated the provisions of this chapter.

(3) After presentation of all evidence, if the state board determines that the administrator or employee knowingly violated the provisions of this chapter, the state board may provide any or all of the following administrative remedies:
   (A) Issue a letter of reprimand; or
   (B) Suspend or revoke the administrator's or teacher's Arkansas teaching license for a definite period, or permanently.

(b) After reasonable notice and opportunity for a hearing, a board of a public educational entity may take appropriate administrative remedies against an administrator or employee that has allegedly violated the provisions of this chapter. If an administrator or employee of a public educational entity is charged by the prosecuting attorney for a possible violation of this chapter, the public educational entity's board may, after reasonable notice and opportunity for a hearing, place the individual charged on leave, with or without pay, dismiss the individual, or provide any other proper administrative remedy. If the individual is dismissed by the board due to charges being filed for an alleged violation of this chapter, any employment contracts with the public educational entity shall be deemed void from the date of the action of the board.
6-24-114. Administrative remedies applicable to administrators and employees (Cont.).

• (b) After reasonable notice and opportunity for a hearing, a board of a public educational entity may take appropriate administrative remedies against an administrator or employee that has allegedly violated the provisions of this chapter. If an administrator or employee of a public educational entity is charged by the prosecuting attorney for a possible violation of this chapter, the public educational entity's board may, after reasonable notice and opportunity for a hearing, place the individual charged on leave, with or without pay, dismiss the individual, or provide any other proper administrative remedy. If the individual is dismissed by the board due to charges being filed for an alleged violation of this chapter, any employment contracts with the public educational entity shall be deemed void from the date of the action of the board.
• **6-24-117. Board position vacant upon conviction.**

  • If a board member is found guilty of violating the provisions of this chapter, the board member shall immediately cease to be a board member, the position is declared vacant, and a replacement shall be named as provided by law.
Sale of District Property

- District must have an adopted policy on procedures for sale of district property.
- District must follow their policy.
- To establish selling price, the district must establish the fair market value for the property.
- District must adopt method of soliciting bids (or auction) for sale of items.
- Everyone must have equal opportunity to purchase.