Competitive Bidding Guidelines

CONSTRUCTION, RECONSTRUCTION, REMODELING
MATERIALS, GOODS, WARES

K.S.A. Supp. 72-6760 (statute on page 2) requires that **no expenditure involving an amount greater than $20,000** for construction, reconstruction or remodeling or for the purchase of materials, goods or wares shall be made by the board of education of any school district **except upon sealed proposals, and to the lowest responsible bidder**.

For example:

- Does a school district have to bid used equipment such as a used vehicle? Yes, if the price of the used vehicle exceeds $20,000, the board must bid. Specifications would be drawn up on the used vehicle and the bid could be sent to car dealers who would bid on that vehicle. Bid specifications can be determined by the board.

- Does a school district have to bid for computer equipment? The local board can set specifications, but if the purchase of computers is over $20,000, it must be bid.

State Procurement Contracts

School districts can use State of Kansas contracts for purchases as an alternative to going through the competitive bidding process. All state procurement contracts can be viewed online at the following **Kansas Department of Administration – Office of Procurement and Contracts** website: https://admin.ks.gov/offices/procurement-and-contracts

Questions about state contracts to: Tracy Diel, Director of Purchases tracy.diel@da.ks.gov

For general questions, contact: purchweb@da.ks.gov – main number (785) 296-2376
Office Procurement and Contracts - 900 SW Jackson St., Room 451, Topeka 66612-1212

Buy Equipment & Repair Buildings out of General Fund

K.S.A. 72-6428, allows school districts to buy equipment and repair buildings out of general and supplemental general fund. In addition, school districts have the authority to purchase equipment, repair buildings, and maintain property and equipment out of capital outlay. The common definition of "repair" is to bring the building back to its original condition.

Remodeling of buildings must be paid out of capital outlay - **not** out of general or supplemental general fund.

Sale and use of school property

K.S.A. 72-8212 permits a school district to sell property no longer needed. The method of sale is left to the local board of education and could be sold by sealed bid, auction, or any method they deem to be in the best interest of the school district.

The local board also has the authority to allow school property to be used for community purposes. Below is the statute which covers school district bidding.

K.S.A. Supp. 72-6760
School district expenditures over $20,000; requirements relating to bids and bidders; exemptions.

(a) Except as provided by this section and K.S.A. 6760b, no expenditure involving an amount greater than $20,000 for construction, reconstruction or remodeling or for the purchase of materials, goods or wares shall be made by the board of education of any school district except upon sealed proposals, and to the lowest responsible bidder.

(b) The provisions of subsection (a) do not apply to expenditures by a board of education for the purchase of:

(1) Services;

(2) products required to be purchased under the provisions of K.S.A. 75-3317 through 75-3322, and amendments thereto;

(3) educational materials directly related to curriculum and secured by copyright;

(4) motor fuels required to provide or furnish transportation;

(5) food and foodstuffs necessary for the implementation or operation of any child nutrition program;

(6) articles or products that are produced, manufactured or provided by inmates under the prison-made goods act of Kansas;

(7) natural gas that will be consumed in buildings owned or operated by the school district;

(8) materials, goods or wares required for reconstructing, remodeling, repairing or equipping buildings when such purchase has been necessitated by the occurrence of a loss against which the board of education has purchased property or casualty insurance; and

(9) materials, goods or wares which are purchased:

(A) from vendors who have entered into contracts with the state director of purchases pursuant to state purchasing statutes for purchases by state agencies;

(B) under the same pricing provisions established in the state contracts, subject to agreement of the vendor to honor the state contract prices; and

(C) under the same pricing provisions established in federal, national or other state contracts facilitated by a federal or local governmental entity or agency, subject to:

(i) agreement of the vendor to honor the contract prices; and

(ii) approval by the board of education for expenditures in an amount greater than $20,000.

(c) Whenever the board of education of any school district lets bids for the purchase of materials, goods or wares and bids are submitted by bidders domiciled within the school districts and by bidders domiciled outside the school district, the school district, the school district domiciliary which submitted the lowest bid may be deemed the preferred bidder and awarded the bid if:

(1) the quality, suitability and usability of the materials, goods or wares are equal;

(2) the amount of the bid of the school district domiciliary is not more than 1% greater than the amount of the low bid; and

(3) the school district domiciliary agrees to meet the low bid by filing a written agreement to that effect within 72 hours after receiving notification of being deemed the preferred bidder.

(d) The provisions of subsection (c) do not apply to expenditures for construction, reconstruction, or remodeling.

- ***Materials, Goods and Wares includes:***
  1. Supplies (includes all expendable items such as uniforms, custodial materials, teaching materials, and all other consumable materials).
  2. Equipment (an article that is nonexpendable and if damaged, or some parts lost or worn, would be more feasible to repair than replace).
  3. Tangible personal property.

- ***Construction***
  1. Something tangible being built or erected such as remodeling, reconstruction, additions to, repair, and alterations of school facilities.
  2. Installation of irrigation systems or landscaping of school grounds.

BID PROCESS: Recommendations for the Board of Education

1. Recommend boards of education consider fixing a lower dollar amount as a minimum when competitive bids are required. **State law requires a minimum of $20,000.** Some boards may desire to go to a lower dollar amount.
2. Write clear and concise bid specifications.
3. Publish bid solicitation in official school newspaper
4. Allow adequate time for the bidders to submit sealed bids.
5. Set a time for bid opening.
6. Open bids publicly.
7. Involve at least two school personnel in the bid opening.
8. Avoid negotiation of bid specifications after bids have been accepted.
9. Correct and request new bids if bid specifications are inadequately written.
10. Return bids unopened and re-bid the project if an error is discovered in the bid specifications prior to bid opening.
11. Any bids that are submitted beyond the due date should be returned unopened for noncompliance with the bid specifications.
12. The bid specifications should provide for inclusion within the bid of the company name, address, telephone number, name of contact person, as well as the bid itself.
13. Include a specific date, time, and location for the submittal of bids and specific date, time, and location for opening such bids in the bid specifications.
14. Document and retain records to ensure bidding procedures are followed. Documentation should be on file in the school district office if any bids are rejected because the bidder is considered "not responsible".
15. All bidders should receive a bid summary with a letter of acceptance or rejection on the board of education's decision.
16. Review K.S.A. 44-1030 and include that law (discrimination) in all contracts.

Preferential Bidding

1. Accept the lowest responsible bidder as required by law.
   (Review the exceptions in K.S.A. 72-6760 as shown on page 1 of these guidelines.)
2. Do not grant preferential bids to local contractors or businesses unless the district is in compliance with K.S.A. 72-6760.

Construction

K.S.A. 60-1111 requires that for **construction, reconstruction, and remodeling projects which exceed $100,000,** ensure all construction contractors provide a payment bond to the State of Kansas (also referred to as a public works bond, a surety bond, a statutory bond, or a labor and materials bond). The amount of the bond should be at least equal to the cost of the project. Contractors should file a payment bond with Clerk of District Court in the county where the project is to be constructed and furnish the school district with copies of the bond bearing written approval of Clerk of the District Court.

Recommendations for Construction Projects:

1. In the process of accepting bids on construction projects, make sure it is clear who will provide the builder's risk insurance and in what amount.
2. Ensure the amendments or addendums to original bid specifications be submitted in writing by the school district and acknowledged by each bidder.
3. Include a five percent bid bond in all construction contract bids.
4. Include a statement which requires contractors to comply with all local, state, and federal laws, ordinances, and regulations, in all bids. For example, see K.S.A. 44-1030.

Miscellaneous

1. Ensure that all **out-of-state bidders** comply with preferential bid law.
   "K.S.A. 75-3740a. State and Local Government Contracts; Bidders Domiciled in Other States. To the extent permitted by federal law and regulations, whenever the State of Kansas or any agency, department, bureau or division thereof or any municipality of the state including, but not limited to, county, school district, improvement district or other public body lets bids for contracts for the erection, construction, alteration or repair of any public building or structure or any addition thereto or for any public work or improvement or for any purchases of any goods, merchandise, materials, supplies, or equipment of any kind, the contractor domiciled outside the State of Kansas, to be successful, shall submit a bid the same percent less than the lowest bid submitted by a responsible Kansas contractor as would be required of such Kansas domiciled contractor to succeed over the bidding contractor domiciled outside Kansas on a like contract let in such contractor's domiciliary state."
2. Purchase orders should not be split to get under the $20,000 limit for the purpose of circumventing the bidding law.
3. The **School Bond Guide** should be carefully reviewed prior to any major **construction projects which require a vote of the patrons.** This guide, provided by KSDE, examines statutes and laws applicable to the construction of school buildings. Samples of forms are also included.

   To review or print the **School Bond Guide,** go to the KSDE School Finance website: http://www.ksde.org/Agency/FiscalandAdministrativeServices/SchoolFinance/GuidelinesandManuals.aspx.
4. **Require sealed bids and do not allow telephone quotes** (except bids authorized by Section 3 which allows on-line bidding or reverse auctioning.) K.S.A. 72-6760
5. Ensure that the board of education **reserves the right to reject any or all bids**. In some cases, school district may not have sufficient funds to fund the project or may desire to delay the project.

6. **Purchasing cooperatives** should be reviewed to see if the district can get better prices because of volume purchasing. The school can have the cooperative bid on their behalf, but must ensure the cooperative has followed the bid statute.

Project Exemption Certificate

In order for schools to be exempt from the Kansas sales tax for sales purchased by a contractor, a project exemption certificate **must** be obtained from the Director of Policy and Research, Kansas Department of Revenue. ***This would include any size project to construct, equip, reconstruct, maintain, repair, enlarge, furnish or remodel facilities.***

An application for a project exemption certificate can be downloaded from www.ksrevenue.org. In the search box, type **PR-76** (the form number). The completed application may be mailed to: Office of Policy & Research, Kansas Dept. of Revenue, 915 SW Harrison St., Room 230, Topeka KS 66612-1588; or faxed to (785) 296-7928.

The effective date of the project exemption certificate is the date the application is received by the Department of Revenue. Only sales made on or after this date will be honored as tax exempt by the state. This certificate is only good for the named project.

If you have questions, please contact:

Craig Neuenswander, Director
School Finance
(785) 296-3872
craign@ksde.org

Kansas State Department of Education
Landon State Office Building
900 SW Jackson St, Ste 356
Topeka, KS 66612-1212

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The Kansas State Department of Education does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following person has been designated to handle inquiries regarding the non-discrimination policies: KSDE General Counsel, Office of General Counsel, KSDE, Landon State Office Building, 900 SW Jackson, Suite 102, Topeka, KS 66612, (785) 296-3201.