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Refresher on "Purchasing Guidelines" for County Boards of Education

West Virginia State Board of Education Policy 8200 sets forth the purchasing guidelines for a county board of education. Although Policy 8200 is over sixty-five pages in length, it's always prudent for school superintendents, central office staff, principals, and board members to review the Policy on a yearly basis. The purpose of the Policy is to establish the minimum requirements and procedures to be followed by county boards of education, regional education service agencies (RESAs) and multi-county vocational centers (MCVCs) in the purchasing, receiving, safeguarding and disposal of goods and services obtained for use in their operations. There are sections of Policy 8200 that are utilized on a daily basis that should always be at your fingertips. This monthly newsletter provides a few of the key daily guidelines that are always helpful to have at your fingertips.

In particular:

- 1.5. No board member, officer or employee shall participate in the selection, award, or administration of a contract or purchase order with a related party, or where a conflict of interest, real or apparent, exists.
- 1.6. No board member, officer, or employee shall solicit or accept gratuities, favors, or anything of monetary value from contractors, vendors, or parties to any awards, agreements, or contracts. This prohibition does not apply to unsolicited gifts of nominal value, which is recognized by the West Virginia Ethics Commission to be a gift whose value is less than \$25.

7.11. Competitive Bid Threshold Limits:

7.11.1. Purchases costing less than \$5,000:

- a. Competitive bids are encouraged but not required.
- b. An approved purchase order is required before the merchandise or service is ordered.

7.11.2. Purchases costing \$5,000 or more but less than \$10,000:

- a. Competitive bids are required.
- b. A minimum of three (3) verbal quotes must be obtained, whenever practical.
- c. Bids may be solicited by telephone, internet, mail, or by visiting the vendor.
- d. Documentation must be maintained of all quotes obtained, recording the name of the vendor, name of the vendor's representative, name of the LEA's representative seeking the quote, date, commodity, and price.
- e. An approved purchase order is required before the merchandise or service is ordered.

7.11.3. Purchases costing \$10,000 or more but less than \$25,000:

- a. Competitive bids are required.
- b. A minimum of three (3) written bids must be obtained, whenever practical.
- c. Bids may be solicited by telephone, internet, or mail, but a written bid must be submitted by the vendor.
- d. A "No bid" is not to be considered a received bid, so sufficient requests should be solicited to assure that at least three actual bids are received, whenever practical.
- e. All bids received must be retained for public review and inspection during normal business hours.
- f. An approved purchase order is required before the merchandise or service is ordered.

7.11.4. Purchases costing \$25,000 or more but less than \$50,000:

- a. Competitive bids are required and bids shall be solicited from at least three known suppliers whenever practical, using advertising media such as newspapers, the internet, trade journals, purchasing bulletins, other media considered advisable, or mass mailings.
- b. If a vendor list is maintained, this requirement may be met by submitting the bid request to the vendors on the list.
- c. If a vendor list is not maintained, a good faith effort must be made to solicit as many competitive bids as practical, providing them adequate time to submit proposals.
- d. The invitation for bids, must include all specifications and pertinent attachments, and shall define the items or services in order for the bidder to properly respond.
- e. An LEA may waive the requirement to advertise when a vendor is considered to be the sole source for the item being purchased, when it is determined to be in the best interest of the LEA, or when professional, technical, or specialized services are being acquired under an agreement. All waivers must be well documented and those based on a best interest determination must be approved by the county superintendent, or director of a RESA or MCVC.
- f. Any and all bids may be rejected if there is a sound documented reason.
- g. The request for bids must be retained for public review and inspection during normal business hours. After the bid is awarded, all criteria and evaluations used in making the selection, as well as all bids received from vendors, must be retained for public review.
- h. An approved purchase order is required before the merchandise or service is ordered.

7.11.5. Purchases costing \$50,000 or more:

- a. The solicitation for bids must specify that the bids are to be received in the form of sealed bids.
- b. The request for bids must be publicly advertised using such media as legal advertisements in local newspapers, the internet, trade journals, purchasing bulletins, mass mailings or other media considered advisable, and adequate time must be provided to allow interested bidders sufficient time to submit their responses prior to the date set for the opening of bids.
- c. The invitation for bids must include all specifications and pertinent attachments and must define the items or services in order for the bidder to properly respond.
- d. All bids will be publicly opened at the time and place specified in the invitation for bids.
- e. An LEA may waive the requirement to advertise when a vendor is considered to be the sole source for the item, when it is determined to be in the best interest of the LEA, or when professional, technical, or specialized services are being acquired under an agreement. All waivers must be well documented, and those based on a best interest determination must be approved by the governing body.
- f. Any and all bids may be rejected if there is a sound documented reason.
- g. The request for bids must be retained for public review and inspection during normal business hours. After the bid is awarded, all criteria and evaluations used in making the selection, as well as all bids received from vendors, must be retained for public review.
- h. An approved purchase order is required before the merchandise or service is ordered.

9. Exemptions from Competitive Bid Requirements.

The following items or services may be purchased by LEAs without advertisement or obtaining competitive bids.

- Accounting services and audits of individual schools - Does not include the annual audit of the LEA's financial statements.
- Advertising - Any advertisement placed directly with newspapers, trade magazines, etc. Does not include radio, broadcast television, or cable television; any indirect placement, promotional items; or advertising consultant services.
- Artwork and Historical Items - Includes purchase of and service to artwork and historical items.
- Attorneys and Law Firms.
- Auditing Contracts between Governmental Agencies.
- Entertainers.
- Facilities Rentals - Expenses including food beverages, entertainment and other expenses related to conducting a meeting.
- Medical Fees - Fees for medical services (behavioral and physical) from individual doctors, psychologists, dentists, clinics, hospitals, audiologists, county medical examiners, physical and occupational therapists, behavioral counseling and evaluations, etc. for individual students.
- Postage - Stamps, metering, overnight services.
- Software maintenance.
- Student activities - (Lecturers, entertainers, athletic events, referees, teachers for staff development, etc.).
- Investigative Services, Subject Matter Experts and Witnesses - For administrative hearings and legal procedures.
- Subscriptions and publications - (Newspapers, textbooks, and publications (electronic and hard copy) purchased directly from the publisher.
- Training Activities - Lecturers, honorariums, copyrighted test and training materials, test monitors, examination proctors, etc., where competition is not available.
- Tuition, Stipends, Accreditation and Registration Fees.
- Utilities - Regulated by the Public Service Commission.
- Livestock and fish stock for vocational programs.

Should at any point you have any questions or concerns regarding this issue or any other issues, please feel free to contact the attorneys of Dinsmore & Shohl's Education Law Practice Group.