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EXPLANATION: CONSTRUCTION CONTRACTS BIDDING AND AWARDS

MSBA has revised this policy for clarity, to better align with state statute and for the following reasons:

1) This policy has been revised to reflect the additional contracting options that school districts now have due to changes in state statute. Section 67.5050, RSMo., authorizes political subdivisions such as school districts to use the construction manager at risk model of construction delivery for construction projects that exceed \$3,000,000. That statute and policy FED outline the mandatory, detailed process for selecting a construction manager when using this model. This policy was modified to specifically reference the construction manager at risk model. Section 67.5060, RSMo., details how political subdivisions such as school districts may use a design-build construction model. That statute and policy FEE outline the specific process for selecting a contractor using this model. This policy was modified to specifically reference the design-build construction model.

2) Senate Bill 182 (2017) amended § 34.209, RSMo., to prohibit governmental entities like school districts from entering into project labor agreements. This policy was amended to remove the reference to project labor agreements.

3) The "Change Orders" section has been modified to provide the district's personal representative the authority to enter into change orders in situations where a delay might negatively impact the district. This change is optional. State statute requires school boards to approve all contracts. Change orders are essentially modifications to the contract. For that reason, Board approval of change orders is important. That said, MSBA recognizes that there are extreme situations where decisions need to be made quickly, and the Board cannot be gathered in a timely manner. In those situations, there should be an alternative, and this language provides the alternative. However, this exception should be used rarely.

ATTORNEY COMMENT:

The district's language related to capping change order at \$60,000 per project contradicts the previous paragraph that established a 20% /\$100,000 cap.

Further the statement is in a paragraph that requires projects to be rebid if the change exceeds the cap established in the previous paragraph.

2019C UPDATE

This policy has been amended to recognize changes to the prevailing wage law created by House Bill 1729 (2018). The district is no longer required to pay prevailing wage (or the public

works contracting minimum wage as discussed below) for construction projects that will not exceed \$75,000.

The new law also attempts to address the concern of more rural districts that the prevailing wage is not really the going rate for construction work in the area. If contractors report fewer than 1,000 hours of labor in a county, districts in the county will use the public works contracting minimum wage (PWCMW) instead of the prevailing wage for projects over \$75,000. The PWCMW is defined as 120 percent of the average hourly wage in a locality as determined by the Missouri Economic Research and Information Center within the Department of Economic Development.

This policy has also been updated to reflect changes made by House Bill 604 (2019). As a result of House Bill 604, school districts must advertise and bid construction projects that may exceed \$50,000. Previously, the threshold amount was \$15,000.

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
X	Facility Maintenance		Food Service		Gifted
	Human Resources		Principals		Library/Media Center
	Health Services		Counselor		Special Education
	Transportation		Public Info/Communications		Technology

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CONSTRUCTION CONTRACTS BIDDING AND AWARDS

The Platte County R-3 School District seeks to provide and maintain safe facilities capable of supporting the education mission of the district, while at the same time utilizing public funds prudently.

Definitions

For the purposes of this policy, the following definitions apply:

Construction – Building a new facility or improving, enlarging, altering, painting, decorating, excavating, demolishing or performing major repairs on an existing facility.

Facility – A building, structure, stadium, field or parking lot, or part thereof, such as a roof or heating or air conditioning system.

Major Repair – Replacement or repair of existing facilities when the size, type or extent of the facility is changed or increased.

Personal Representative – Unless otherwise specified in a construction contract, the district's personal representative is the superintendent or designee.

Project Planning

Construction projects will be planned to cause the least disruption to the district's education program and to ensure the safest possible environment for students, staff and the public. District staff will rely on the district's long-term facilities plan when making decisions regarding construction and major repair of district facilities. The district is committed to providing accessible facilities. All projects will comply with laws regarding accommodations for individuals with disabilities, and the district will consider **other** recommended accommodations as well.

Before bidding a project, the district will determine whether engineering, architectural or land surveying services are required and ~~will select those services~~ **whether the district will use a construction manager, a construction manager at risk, a general contractor or a design-build contractor. These professional services will be selected** in accordance with law and Board policy. The superintendent or designee is authorized to contact legal counsel for assistance in **complying with the applicable laws and** drafting or reviewing proposed contract language.

~~The district may enter into a union-only project labor agreement if the district 1) is utilizing no more than 50 percent of state funds on the construction project, 2) conducts an impact analysis, 3) publishes the results of that analysis and the reasons for requiring such an agreement, and 4) holds~~

~~a public hearing, as required by law. The district will publish its determination on whether to require a union-only project labor agreement within 30 days of the public hearing.~~

Purchasing Materials

All materials purchased either directly by the district or indirectly by the contractor or subcontractors must comply with legal requirements, including the purchasing preferences required by law. **In addition, materials purchased for use in projects funded by federal awards must comply with federal requirements.**

Bidding

All construction projects that may exceed an expenditure of \$~~15~~**50**,000 shall be advertised in a newspaper of general circulation **once a week for two consecutive weeks**, in accordance with law, and ~~may~~**should** also be advertised in **places likely to get responses from contractors. Those places should include** business, trade or minority newspapers or other modes of communication, such as the district's website or other websites. Projects will not be split or artificially divided for the purpose of avoiding these competitive bidding requirements.

Prior to advertising for bids, the superintendent or designee and the architect or construction manager, if applicable, will draft detailed bid specifications for the construction project. Bid specifications will include all legal mandates including, but not limited to, requiring:

1. ~~Compliance with~~**Payment of the prevailing wage requirements or the public works contracting minimum wage (PWCMW) when required by state law.**
2. Laborers to receive mandatory safety training.
3. Contractors bidding on a contract for services in excess of \$5,000 to provide a sworn affidavit and supporting documentation that affirms the contractor's participation in a federal work authorization program, such as E-Verify, and that the bidder will not employ ~~illegal~~**unauthorized** workers for the project. A contractor is only required to provide this affidavit to the district annually.
4. A performance bond if the project is estimated to exceed \$50,000.

The ~~Board of Education~~**district** may also require a bidder's bond in an amount determined by the estimated cost of the project.

In accordance with the Sunshine Law and Board policy, the Board may discuss bid specifications in closed session, and the content of those bid specifications will remain confidential until they are

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officially approved by the Board or published for bidding. Likewise, sealed bids and related documents will be closed until the bids are opened.

Sealed bids may be opened at a public meeting of the Board of Education or by administrative personnel. In either case, all bids shall be publicly opened, and the date, time and place of the bid opening shall be included in the bid notice. Notice of the bid opening will also be posted for the public.

The district will not entertain bids that are not made in accordance with the specifications furnished by the district. The district reserves the right to waive minor technical defects in a bid, reject any or all bids, reject any part of a bid and to advertise for new bids. If the scope of the project changes substantially, the district will rebid the project.

The Board will determine which responsible bidder has the lowest or best bid and direct the superintendent or designee to negotiate a satisfactory contract prior to final approval of the bid.

Contracting

The superintendent or designee is authorized to consult legal counsel regarding contract language. Any contract the district enters into must include all legally required provisions. The contract must be approved by an affirmative vote of a majority of the whole Board to be binding.

Payment and Retainage

Unless contrary to any federal funding requirement or unless funds from a state grant are not received in a timely manner, the district's personal representative will ensure that prompt payment is made to the contractor and any professional engineer, architect, landscape architect or land surveyor in accordance with law and the contract governing the construction project.

The Board must approve the payment of all bills by an affirmative vote of a majority of the whole Board.

The personal representative shall pay any professional engineer, architect, landscape architect or land surveyor the amount due within 30 days following the receipt of an invoice prepared and submitted in accordance with the contract terms. In addition to the payment due, the contracting agency shall pay interest at the rate of one and one-half percent per month, calculated from the expiration of the 30-day period until fully paid.

Contractors

In accordance with law, the district's personal representative may retain a portion of the payment to a contractor, not to exceed five percent of the value of the contract or subcontract, until after the

entire project has been completed. If the contractor is not required by law to obtain a bond because the cost of the project is not estimated to exceed \$50,000, the district's personal representative will ~~may~~ retain an amount ~~equal to~~ **not exceed** ten percent of the value of the contract or subcontract.

When applicable, the architect or construction manager shall approve all payment requests prior to submission to the Board of Education for payment. The superintendent or designee will examine all work performed on projects where no architects or construction managers are used.

~~Pursuant to~~ **If the prevailing wage or the PWCMW is required by laws, the contractor must file an Affidavit of Compliance** ~~must be filed~~ with the district before **final** payment will be approved **or paid**. The district will withhold and retain any amounts due ~~as a result of any violation of the prevailing~~ **prior to making final payment to any contractor who fails to pay the appropriate wage as required by law** ~~prior to making final payment with any contractor~~.

Change Orders

Change orders in excess of \$15,000 will not be approved without prior Board action, except as provided for herein. The district's personal representative may authorize change orders of less than \$15,000. The personal representative must submit written ~~verification~~ **documentation** of the change order to the Board as soon as possible. The personal representative may also approve change orders that exceed \$15,000 if **the time it would take to obtain** ~~waiting for Board action~~ **approval** ~~could~~ **would** negatively affect the construction timeline or project budget, and the change order does not include work outside the scope of the original project that would be considered a new, separate project. ~~In such instance~~ **When used**, the personal representative must submit ~~verification~~ **documentation** of the change order to the Board immediately **with an explanation as to why it was approved prior to Board action**, and the change order will be placed on the Board's next regular meeting agenda for ratification. **Even when using this exception, the total value of all change orders for a particular project shall not exceed 20 percent of the overall project costs up to a maximum of \$100,000 without prior Board approval.** ~~The personal representative may not restructure a change order in an attempt to circumvent the requirement for Board approval.~~

If a change order increases the cost of a project to over \$75,000, the district will require the contractor to pay either the prevailing wage or the PWCMW for the portion of the project that exceeds \$75,000 and provide an Affidavit of Compliance to the district prior to payment.

All change orders approved by the Board or the personal representative shall be documented and retained with other documents related to the construction project. If a submitted change order exceeds \$15,000 and includes work outside the scope of the original project that results in a substantial change that would be considered a new, separate project, the Board will rebid the work contained in the change order.

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Construction Projects Conducted on Behalf of the District

The district appreciates business and community support of its education mission and welcomes both financial and physical contributions to the district. It is important for taxpayers and patrons to understand that various laws apply to projects conducted on behalf of the district, even if **when those projects are** not directly funded by the district. Further, ~~because the district facilities are used by a large number of people,~~ it is essential that all construction projects adhere to the highest level of quality and safety. The district and the donor must ensure compliance with all applicable laws before a construction project is conducted on school grounds regardless of the **labor** source of the labor or **payment** method of payment.

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Note: The reader is encouraged to check the index located at the beginning of this section for other pertinent policies and to review administrative procedures and/or forms for related information.

Adopted: 12/16/1999

Revised: 05/15/2004; 05/21/2009; 04/15/2010; 10/17/2013; 11/19/2015;

Cross Refs: BBFA, Board Member Conflict of Interest and Financial Disclosure
DGA, Authorized Signatures
DJF, Purchasing
DJFA, Federal Programs and Projects
DK, Payment Process
IGB, Accommodation of Students with Disabilities

Legal Refs: §§ 34.057, .059, **.029**, ~~.216~~, **67.5050**, **.5060**, 107.170, 162.301, 177.086, 285.530,
290.210 - .340, 292.675, 432.070 - .080, 493.010 - .140, 610.021, RSMo.
8 C.S.R. 30-3.010 - .060

Platte County R-3 School District, Platte City, Missouri