

KIRTON | McCONKIE

**KIRTON | McCONKIE**

Procurement Law  
and Utah Charter  
Schools

Joel D. Wright

# Procurement Law and Utah Charter Schools

The Essentials in 15 Minutes (with a quiz at the end!)

# HISTORY

- Until May 1, 2013, Procurement Procedures for Utah's Charter Schools were "murky" at best
- Charter Schools were essentially expected to adopt a Purchasing Policy that complied with applicable Utah law, which was very general in nature
- However, the Legislature passed SB 190 in the 2013 Legislative Session, and it became effective on May 1, 2013, which is very specific in its requirements and guidelines for Utah's Charter Schools
- **IF YOUR CHARTER SCHOOL HASN'T ADOPTED A NEW PURCHASING POLICY SINCE MAY 2013, YOU LIKELY ARE NOT COMPLYING WITH CURRENT LAW**
- Utah's Charter Schools have until September 15, 2013 to adopt a purchasing policy specific to their school and consistent with Utah Law. If you haven't yet done so, you should do it ASAP.



## Audits of Charter Schools

- The Utah State Auditor announced that he will start auditing charter schools for compliance with the new Procurement Law starting in September 2014.
- An audit with bad findings could result in disciplinary action, inability to amend or expand charter, harm ability to obtain financing, harm reputation in community and possibly even result in loss of charter if the findings are bad enough.

# OVERVIEW

Why are there procurement laws? Why can't a charter school just buy whatever they want, whenever they want it?

Short Answer: To make sure taxpayer dollars are being used to get the best value for the best price.

Long Answer:

1. To make sure taxpayer dollars are being used to get the best value for the best price.
2. To ensure fair treatment for anyone who sells goods or services to a taxpayer funded entity.
3. To encourage competition and innovation within the free enterprise system.

Charter School board members have a fiduciary duty to make sure they are getting the best value for their expenditures, and insure compliance with the law.

# ALL YOU NEED TO KNOW ON ONE PAGE?!?

So, in a nutshell, here is how the Utah Procurement Code applies to charter schools:

- Purchases of \$5,000 or less: You can purchase anything using your best judgment.
- Purchases over \$5,000 to \$50,000: At least two vendors should give you a price and the award made to the lowest acceptable price. The names of the vendors offering quotations, and the date and amount of each quotation, must be recorded and maintained as a public record.
- Over \$50,000: As required by law, your charter school must issue a formal Request for Proposals (or RFP). An RFP is basically a statement on what your charter school is looking to purchase that costs over \$50,000. Once the RFP is written, it is posted in a public place (typically BidSync at [www.bidsync.com](http://www.bidsync.com)) with the hope that your school will then receive multiple bids that your school can carefully evaluate, and then select the best response.

## EXCEPTIONS (yep, exceptions)

1. Leasing or Purchase of Real Estate – does not apply!
2. Small Purchases – cannot “divide up” purchases to avoid more stringent requirement.
3. Gratuities or Kickbacks – cannot accept anything while an RFP is outstanding, or deciding on a purchase. Use caution otherwise.
4. Single Source – consult with an attorney, rarely applicable.
5. Agreement more than Five Years – not allowed. Consult attorney for exceptions.



# Quiz

1. Purchases over what amount require documentation? What sort of documentation?
2. Purchases over what amount require an RFP? What is an RFP?
3. Your school budgets \$60,000 to buy computer tablets. Your Business Manager gets four quotes, and then buys \$30,000 of them in September and another \$30,000 in January. Any problems?
4. A bank forecloses on a two acre parcel adjacent to the school that would be really useful for more parking and playground space. The bank announces that they will start bids at \$70,000 in two weeks, and the board authorizes the business manager to bid up to \$140,000 for the land. But your Principal says that you have to issue an RFP first, because the price will clearly be over \$50,000. Is he right?
5. A charter school signs a lease to build a high school expansion on adjacent property. The USOE says that the school must follow the procurement code on the construction process. Is the USOE right?
6. Your Landlord invites the Board Chair to come to a Jazz game with him to discuss the potential sale of your leased building. OK?
7. Your school's heater dies unexpectedly 2 days before Christmas break is going to end. Your business manager is on top of it, and gets 3 bids the next day. The lowest one is for \$16,000, and can have the job done before school starts. The business manager emails the board, and tells them he will use the cash reserves to make the purchase, and the Board Chair emails back from Hawaii: "thanks". Any problems?
8. Can a school's internal purchasing policy be less strict, or more strict, than the Procurement Code? What happens in the event the school's internal purchasing policy conflicts with the Procurement Code?

## Contact

Joel Wright

[jwright@kmclaw.com](mailto:jwright@kmclaw.com)

(801) 426-2100

KIRTON | McCONKIE