



Utah Procurement Code

A Road Map For Better Purchasing

BY JOEL WRIGHT

No doubt your charter school is a careful steward of taxpayer funds and always gets the best deal on everything it buys.

Right? Well now you have an even better “tool” to make sure you are getting the best deal possible.

Utah’s new Procurement Code (Utah Code 63G-6a) is designed to help your school become an even better steward of taxpayer funds.

After much deliberation, the Utah Legislature just finalized a substantial overhaul of the Procurement Code, or the laws governing how local governmental entities in Utah (including charter schools) are supposed to procure goods and services. In short, the Procurement Code gives charter schools a road map to prove they got the best deal possible for taxpayer funds on every purchase they make.

So, in a nutshell, here is how the Utah Procurement Code applies to charter schools (see Utah Rule R33-3-3) :

- Purchases of \$1,000 or less: You “may select the best source without seeking competitive quotes.”
- Purchases over \$1,000 to \$5,000: You must “obtain price competition, and purchase from the vendor offering the lowest quote.”
- Purchases over \$5,000 to \$50,000: At least two vendors should be asked to 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) with the hope that your school will then receive multiple bids that your school can carefully evaluate, and then select the best response.

If the Board and Administration at each charter school can just remember and follow the guidance above, you will likely be in compliance with the Procurement Code most of the time.

But, as with most things, there are a few important exceptions. It would be prudent for a school to consult with an attorney on any of the exceptions below or any expenditure over \$50,000, to insure compliance with the law.

So here is a short summary of the key exceptions:

Property Or Real Estate:

There is no area of charter school law in Utah where I have seen more incorrect advice given than the rules and regulations governing the leasing, purchase and construction of real estate by charter schools. Utah’s procurement laws do not apply to the leasing or purchasing of property by a charter school. The law has always exempted the leasing or purchasing of property by a charter school from the Utah Procurement Code. This does not mean, however a charter school should throw caution to the wind and sign a lease with anyone they like. It is strongly recommended a charter school talk to multiple parties to decide exactly what they need and then invite several groups to offer bids or proposals.

However, charter school directly purchases or finances a

substantial construction project, then the Procurement Code does apply, and the applicable laws are fairly complicated.

Small Purchases:

The Procurement Code prohibits a school from dividing up a large purchase into smaller purchases to avoid getting quotes or doing an RFP. For example, suppose your school has a budget of \$75,000 to buy new computers this fiscal year. Your savvy business manager shops around and buys \$40,000 worth of computers in August and then another \$35,000 of computers in December. The manager gets price quotes from three sources and accepts the lowest acceptable bid. No problem, right? Wrong. Your budget for computers was clearly over \$50,000 and an auditor or outside party could accuse you of breaking the law because you “divided” a \$75,000 purchase into two purchases less than \$50,000 to “avoid” doing an RFP. The bottom line: if your budget for any item in any single fiscal year exceeds \$50,000, you should do an RFP. And if it exceeds \$5,000 (but is less than \$50,000) you should get two price quotes.

Gratuities Or Kickbacks:

If someone offers you a \$10,000 bribe, you would say no and, hopefully, report them. Well, not all kickbacks, or even gratuities, are that simple. Given the current version of the law, any charter school official should refrain from accepting anything at all from someone when an RFP has been issued, including something as simple as a meal. You can accept gratuities from current vendors, such as meals or tickets, but it is prudent to be cautious. When in doubt, just politely decline any free meals, tickets or other gratuities.

Single Source:

Sometimes the service your charter school is seeking can only be obtained from a single source. The circumstances are very rare and could be challenged in an audit, so it is wise to consult with an attorney.

Agreement more than five years: The law is clear that charter schools cannot enter into any agreement longer than five years without extensively documenting it is absolutely necessary.

Violations:

So, what happens if your school does not follow the Utah Procurement Code? Well, if anyone accepts an illegal gratuity or kickback, it is a crime with the potential for going to jail. Beyond this, the penalties are largely undefined. Utah’s State Auditor announced in July 2013 he would start auditing Utah’s charter schools in September 2014 for compliance with the Procurement Code. If you do not pass the audit, it is also possible for a losing bidder to file a complaint against your charter school with the Utah Chief Procurement Officer or the State Charter School Board. All of this can be avoided by properly following the Utah Procurement Code.

Internal Purchasing Policy: Just because you have complied with the law does not mean you have complied with your charter school’s internal purchasing policy. Your school cannot make any purchase inconsistent with the budget approved by your board, or your school’s purchasing policy. Make sure your school’s board has taken the time to develop a very thorough internal purchasing policy, with two approvals necessary for any major purchase, and a regular review of all purchases by the board.

In conclusion, by embracing the Utah Procurement Code, you can be confident your charter school is getting the best value possible on all goods and services purchased. 🇺🇸

Joel Wright, an attorney at Kirton McConkie, has represented 50 charter schools in Utah, Arizona, California and Idaho on the leasing, purchase and/or financing of their facilities. He can be reached at (801) 426-2120 or jwright@kmclaw.com. www.kmclaw.com

KIRTON | McCONKIE



How to get the best financing for your charter school.

When faced with multi-million dollar real estate and financial decisions, you need attorneys with the experience, integrity and ability to get your school the best possible deal. Our firm has represented over 30 Utah charter schools who have borrowed more than \$350 million, helping each one get the best price and lowest cost financing available.

Our firm has the experience to present all available options so your board can be confident they made the best decision in an arm’s length transaction.

Please contact Joel Wright at jwright@kmclaw.com or 801.426.2100 for a free consultation on your school’s real estate situation. www.kmclaw.com

