

Approved March 25, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON EDUCATION

The meeting was called to order by Representative Don E. Crumbaker at
Chairperson

3:43 ~~am~~/p.m. on March 20, 1986 in room 519-S of the Capitol.

All members were present except: Rep. Branson, who was excused

Committee staff present: Avis Swartzman, Revisor of Statute's Office
 Ben Barrett, Legislative Research
 Lynda Cory, Secretary to the Committee

Conferees appearing before the committee: None

The Chairman made reference to a letter from Brenda Braden in the Attorney General's office regarding SB 593. Because more discussion is needed on this issue, SB 593 has been held over until Tuesday, March 25, and Senator Mike Johnston, Minority Leader, will meet with the committee. (Attachment 1)

The Chairman invited Ron Green to present the performance post audit report concerning compliance with the bidding laws.

Ron Green stated that one-fourth of all audited purchases greater than \$5,000 violated the bidding laws in the school districts. Nearly 20 percent of all audited purchases were made without obtaining sealed bids as required by law, and those that did obtain sealed bids, more than eight percent of the purchases were not awarded to the lowest responsible bidder. Several of the school districts used multiple purchase orders to avoid the bidding requirements on purchases greater than \$5,000.

The criteria used by the audit committee for determining multiple purchases was looking at the school districts records for large purchases within a short time frame, and then going to the purchase orders to check to see if bids were separate. If it was the same vendor, but unrelated items purchased, items could still be in compliance. The gray areas were reviewed with the school district officials and signatures received to document the multiple purchases.

The recommendations by the Legislative Division of Post Audit were that school districts should establish and follow written procedures to comply with the bidding law. Also the Department of Education should inform the school districts of this audit report and offer to help write their bidding procedures. (Attachment 2)

Discussion followed Mr. Green's report. The problems concerning gasoline for small districts, fresh produce purchased locally, and getting locked into only one vendor for computers that later can not give service or their prices have increased were covered in the discussion. One important concern that came out of the discussion was emergency purchases, such as a boiler going out; concern for this was raised on the Senate side, according to Mr. Green, but no action was taken.

The meeting adjourned at 4:29 p.m.

DATE 3-20-86

GUEST REGISTER

HOUSE

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March 20, 1986

Rep. Don E. Crumbaker
House Education Committee
Statehouse
Room 182-W

Re: SB 593

Dear Rep. Crumbaker:

On behalf of the Attorney General's Office, I request the House Education Committee modify SB 593 slightly. In line 0075 on page 2, the bill states: "School personnel shall be present at all times . . ." We ask that "shall" be changed to "may."

The intent of the law is to protect the best interests of the child. In many or most instances, a child may not object to, or may even request, the presence of a particular school employee during an interview. However, in a few instances, a child may be afraid of, or uncomfortable with the school employee and may prefer to talk to the law enforcement officer alone. We believe that the statute should permit the child's wishes to be respected.

Further, we do not believe it is advisable to mandate by statute that in every instance school personnel must be present. If a case arises in which the law enforcement officer and the school employee jointly decide that it would be better to not have the school employee present, we believe the statute should permit this decision to be made.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Brenda L. Braden
Deputy Attorney General

BLB:may



PERFORMANCE AUDIT REPORT

School Districts' Compliance With Bidding Laws

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
December 1985**

Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$3 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

As a guide to all their work, the auditors use the audit standards set forth by the U.S. General Accounting Office and endorsed by the American Institute of Certified Public Accountants. These standards were also adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee.

Legislators or committees should make their requests for performance audits through the Chairman or any other member of the Committee.

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LEGISLATIVE DIVISION OF POST AUDIT

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PERFORMANCE AUDIT REPORT

School Districts' Compliance With Bidding Laws

OBTAINING AUDIT INFORMATION

This audit was conducted by Ron Green, Senior Auditor, and Tom Vittitow and Curt Winegarner, Auditors, of the Division's staff. If you need any additional information about the audit's findings, please contact Mr. Green at the Division's offices.

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SCHOOL DISTRICTS' COMPLIANCE WITH BIDDING LAWS

Summary of Legislative Post Audit's Findings

Are school districts in compliance with the State's purchasing laws requiring sealed competitive bids? Lack of compliance with State bidding laws is a significant problem. Although the eight audited school districts complied with the State's bidding laws for the majority of their purchases, about one-fourth of all audited purchases greater than \$5,000 apparently violated the bidding laws. Seven districts failed to comply with the bidding laws, and in three districts, multiple purchase orders appeared to circumvent competitive bidding requirements.

Six school districts failed to obtain sealed competitive bids on some purchases greater than \$5,000. None of the audited districts sought bids on textbooks or other published materials. Other purchases not bid included computers, word processors, remodeling and repair projects, and gasoline.

Four of the audited districts did not always award bids to the lowest responsible bidder. One district failed to purchase from the lowest responsible bidder on five of eight purchases greater than \$5,000. Three districts failed to award motor vehicle purchases to the lowest responsible bidder. If all audited purchases had been awarded to the lowest responsible bidders, the districts could have saved about \$16,000.

What steps can be taken to help ensure that school districts comply with the State's purchasing laws? The audit makes recommendations in three areas to help ensure that school districts comply with State purchasing laws. First, the audit recommends that school districts seek legislation amending K.S.A. 72-6760 if they think that textbooks and other published materials should not be acquired through competitive bidding.

Second, the audit recommends that school districts establish and follow written procedures to ensure compliance with K.S.A. 72-6760. Four of the eight audited school districts had no written procedures regarding bidding laws. And one district developed written policies granting authority not to comply with the bidding law whenever noncompliance was in the best interest of the district. The audit also recommends that the Department of Education inform all Kansas school districts about the findings of this audit and offer guidance to all districts in establishing written procedures.

Finally, the audit recommends that the Department of Administration take steps to ensure that school districts' annual financial audits include a specific, detailed review of compliance with State bidding laws. The annual financial audits conducted by public accountants for the eight school districts included in Legislative Post Audit's review made no mention of any failure on the part of any of these districts to follow the State's bidding laws.

SCHOOL DISTRICTS' COMPLIANCE WITH BIDDING LAWS

State law requires school districts in Kansas to seek sealed, competitive bids on construction projects and purchases of goods if the expenditure exceeds \$5,000. Contracts or purchases for these items must also be awarded to the lowest responsible bidder. A school board's failure to comply with this law (K.S.A. 72-6760) could result in legal action to force the bidding of a purchase, to seek money damages, or to oust a school board member.

Legislative concerns have been raised that school districts do not always comply with these bidding laws. This concern was supported by a series of 12 school district performance audits conducted by the Legislative Division of Post Audit between 1981 and 1983. Those audits covered a wide range of topics, including school districts' purchasing practices. Half of the 12 school districts audited in that series were not in full compliance with the competitive bidding laws. Such problems occurred even though school districts are required each year to obtain a financial audit that includes a check for compliance with these laws.

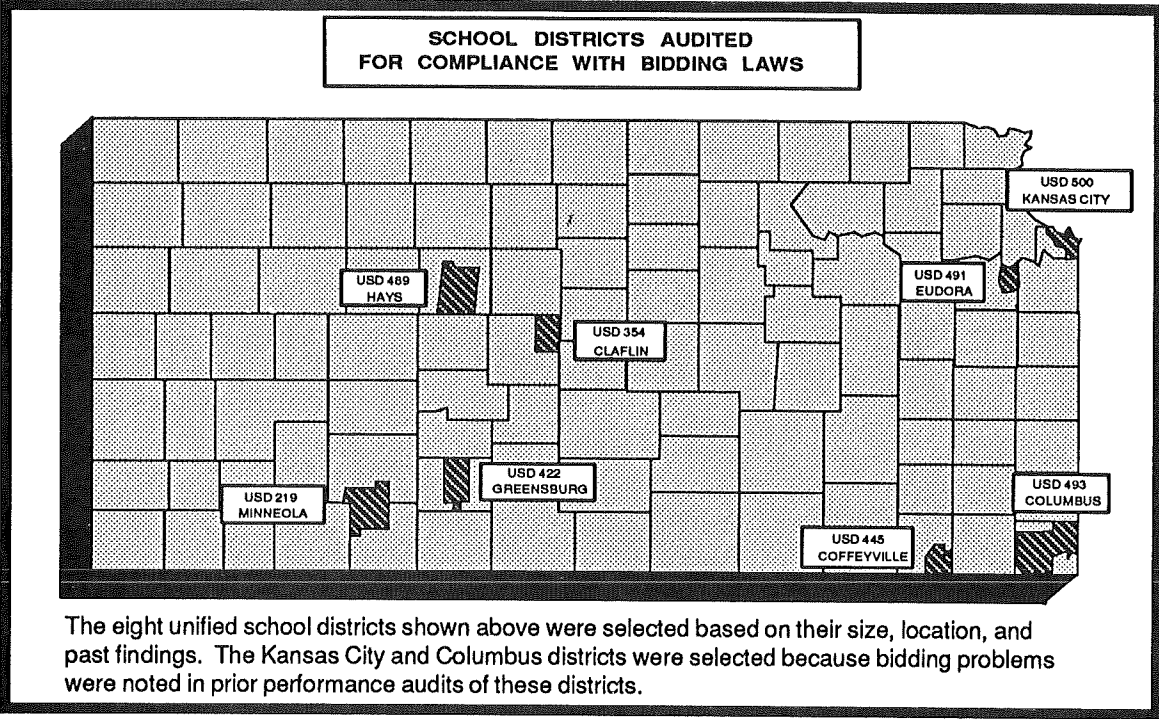
On August 26, 1985, the Legislative Post Audit Committee directed the Division to conduct a performance audit of school districts' compliance with State bidding laws. The audit focuses on two questions:

1. **Are school districts in compliance with the State's purchasing laws requiring sealed competitive bids?**
2. **What steps can be taken to help ensure that school districts comply with the State's purchasing laws?**

To answer these questions, the auditors selected a sample of eight school districts for a detailed review of their bidding practices. These eight districts are listed below.

<u>Audited Districts</u>	<u>Enrollment FY 1985</u>	<u>General Fund Budget, FY 1985</u>
USD 219, Minneola	212.6	\$ 824,600
USD 354, Claflin	260.5	1,161,038
USD 422, Greensburg	427.5	1,445,125
USD 491, Eudora	699.5	2,255,000
USD 493, Columbus	1,320.5	3,860,001
USD 445, Coffeyville	2,947.9	7,461,655
USD 489, Hays	3,124.0	7,505,922
USD 500, Kansas City	22,035.0	59,746,937

These eight school districts were selected to provide representation of all enrollment categories and geographical areas. In addition, the Columbus and Kansas City districts were selected because of bidding problems noted in earlier performance audits. The locations of the eight districts are shown on the map on the next page.



In addition to reviewing the districts' compliance with State bidding laws, the auditors checked to see if school districts were affected by any bid preference laws. Kansas law (K.S.A. 75-3740a) imposes a reciprocal preference against bidders from any other state, if that state imposes a preference against Kansas-based firms. The auditors found that none of the eight school districts had any reason to apply the preference law on any bids let in fiscal year 1985.

Based on the auditors' review of the eight school districts, it appears that lack of compliance with bidding laws is a significant problem. About one-fourth of all audited purchases greater than \$5,000 apparently violated the bidding laws. This includes more than \$242,000 in purchases that were not bid as required, and more than \$264,000 in purchases that apparently were not made from the lowest responsible bidders. While the districts' rationale for some of these purchases may sound reasonable, such purchases violate the law, open up the districts to lawsuits, and undermine public confidence in school boards and administrators.

**Are School Districts in Compliance with
the State's Purchasing Laws Requiring
Sealed Competitive Bids?**

To answer this question, the auditors reviewed fiscal year 1985 purchases for the eight sample school districts. Generally, they found that seven of the eight school districts did one or more of the following:

- failed to solicit bids on a purchase greater than \$5,000
- failed to award a bid to the lowest responsible bidder
- used multiple purchase orders to stay under the \$5,000 level

The following sections of this report show the auditors' findings in each of the three problem categories.

Six of the Eight School Districts Did Not Obtain Sealed Competitive Bids on Some Purchases Greater Than \$5,000

In the eight districts reviewed, the auditors found that nearly 20 percent of all audited purchases greater than \$5,000 were not bid as required by law. These unbid purchases constituted about 10 percent of the total dollar value of the audited purchases. The table below shows the number of purchases not bid as required by law, and the dollar amounts associated with those purchases. The auditors' reviews in the Hays and Kansas City districts were done on a sample basis; in the other districts, all fiscal year 1985 purchases were reviewed.

Purchases Greater than \$5,000 Not Bid as Required by Law (K.S.A. 72-6760)

<u>Audited Districts</u>	<u>Purchases Audited</u>		<u>Purchases Made Without Sealed Bids</u>			
	<u>Number</u>	<u>Dollar Value</u>	<u>Number</u>	<u>%</u>	<u>Dollar Value</u>	<u>%</u>
USD 219, Minneola	1	\$ 11,950	0	0	\$ 0	0
USD 354, Claflin	12	275,492	4	33.3	34,334	12.5
USD 422, Greensburg	7	111,766	1	14.3	6,852	6.1
USD 491, Eudora	11	152,394	5	45.5	43,716	28.7
USD 493, Columbus	23	274,509	1	4.3	7,501	2.7
USD 445, Coffeyville	20	527,766	5	25.0	53,014	10.0
USD 489, Hays	19	221,371	0	0	0	0
USD 500, Kansas City	<u>25</u>	<u>944,626</u>	<u>7</u>	<u>28.0</u>	<u>97,382</u>	<u>10.3</u>
Totals	118	\$2,519,874	23	19.5	\$242,799	9.6

Kansas City had the highest number of apparent violations: seven purchases totaling more than \$97,000 were made without sealed bids. Eudora had the highest percentage of audited purchases made without sealed bids: 5 of 11, or 45.5 percent. The most common types of unbid purchases were textbooks, computer and word processing equipment, remodeling and repair projects, gasoline, and fresh produce.

None of the audited school districts sought bids on textbooks or other published educational materials. Only three of the audited districts had individual purchases of textbooks in amounts greater than \$5,000, but all eight districts indicated that textbooks and related published materials would never be let for competitive bids. The three districts listed below had textbook purchases totaling \$106,291 included in the auditors' sample.

Unbid Textbook Purchases from One Vendor on One Purchase Order Totaling More Than \$5,000

<u>Audited Districts</u>	<u>Number of Purchases</u>	<u>Amount</u>
USD 491, Eudora	1	\$ 6,041
USD 445, Coffeyville	3	34,354
USD 500, Kansas City	<u>4</u>	<u>65,896</u>
Totals	8	\$106,291

Because these purchases were not let for bids, they are included as apparent violations of K.S.A. 72-6760. However, the administrators in several school districts asserted that it would not be practical to seek bids on textbooks because the preferred textbooks are available only from one publisher. Textbooks are generally selected by committee members who must consider the district's quality standards, the content of the available textbooks, and compatibility with the existing coursework.

Three of the audited districts did not solicit sealed bids on some purchases of computer systems or word processing equipment. The three districts listed below made five purchases of computer systems or word processors costing more than \$5,000 each. The total cost for these systems was \$ 46,079.

**Unbid Purchases of Computers or Word Processors
for Amounts Greater Than \$5,000**

<u>Audited Districts</u>	<u>Number of Purchases</u>	<u>Amount</u>
USD 422, Greensburg	1	\$ 6,852
USD 491, Eudora	2	20,567
USD 445, Coffeyville	<u>2</u>	<u>18,660</u>
Totals	5	\$ 46,079

The Superintendent in Greensburg told the auditors that the district made telephone inquiries to obtain the lowest-priced computer equipment. In Eudora, the school district had committed itself to a particular brand of computers. The Eudora Superintendent said a telephone check confirmed that none of the area dealers could meet or beat the price quoted on that brand's educational price list.

The Coffeyville school district bought 12 computers in fiscal year 1985 through a cooperative called the Southeast Kansas Regional Education Service Center. In 1983, the cooperative had negotiated an agreement to buy computers and accessories at high-volume discount prices. Although the prices appear to be favorable for cooperative members, the agreement does not comply with the statutory requirement to obtain sealed bids for goods that exceed \$5,000. According to the Coffeyville Superintendent, a word processor purchased in 1984 should not have been approved without obtaining sealed competitive bids. This purchase occurred shortly after he took the position.

Three school districts did not obtain sealed competitive bids on certain remodeling and repair projects. As the table on the next page shows, the total amount spent on these projects was \$ 51,733. In all of these cases, the school districts were apparently aware of the bidding law, but chose not to seek sealed bid proposals.

**Unbid Remodeling and Repair Projects
for Amounts Greater Than \$5,000**

<u>Audited Districts</u>	<u>Number of Purchases</u>	<u>Amount</u>
USD 354, Claflin	3	\$28,925
USD 491, Eudora	2	17,107
USD 493, Columbus	<u>1</u>	<u>7,501</u>
Totals	6	\$51,733

In the Claflin school district, the largest expenditures made without bidding were two payments totaling \$18,925 for an addition to a storage building. Although documentation in this case was lacking, it appeared that no sealed bids were solicited for this project. Only one written bid was on file, but the Superintendent said that two other bids were taken by telephone.

The Eudora school district spent \$9,592 for materials and labor to repair its football field lights. The Superintendent told the auditors that the repairs had to be made quickly during the 1984 football season, so the work was authorized without seeking bids. The Superintendent acknowledged that sealed bids should have been taken on this project, as well as on wooden library shelves costing \$7,515. The district received two written bids on the library shelves, one from a school supply company and one from a local shop teacher. These bids were received at different times, and were not sealed proposals.

The Columbus district spent \$7,501 for reroofing three buildings. The district wrote one purchase order for this project, and paid the vendor with one check. Nevertheless, the project was not bid because the cost for reroofing any one building did not exceed \$5,000. It appears that the school board either misunderstood the intent of the bidding law in this case, or intentionally made a decision to avoid the bidding process.

The Kansas City school district did not solicit sealed bids on gasoline or fresh produce. The Kansas City school district purchased more than \$127,000 worth of gasoline during fiscal year 1985 without the use of sealed bids. District officials said these purchases were not bid because the prices fluctuated widely and the local suppliers were reluctant to make bids for future deliveries. The district has established a written policy for soliciting telephone quotes from local vendors whenever the district needs a bulk load delivery of gasoline. The district chooses the firm offering the lowest price.

To determine whether this problem was common in the other districts audited, the auditors specifically examined their procedures in this area. Gasoline was purchased through a sealed bid procedure in at least three of the other audited school districts. The Columbus school district began seeking sealed bids for gasoline following the previous performance audit in 1981. The auditors also contacted officials at the other four school districts in the largest enrollment category to learn how they were purchasing gasoline. Two of these districts use procedures similar to Kansas City's. However, the other two large districts require sealed bids for the purchase of gasoline. One of these receives sealed bids weekly, which limits the uncertainty of bids being obtained for future deliveries.

The Kansas City school district had two purchases greater than \$5,000 for fresh produce during fiscal year 1985. These two purchases totaled \$24,114 and were made

without obtaining sealed bids. District officials said that, because of the difficulty in obtaining sealed bids, the district solicits telephone quotes from local vendors whenever the district needs fresh produce.

Four of the Eight Audited Districts Did Not Always Award Bids to the Lowest Responsible Bidder

The table below shows the number and dollar value of audited purchases bid by each district in fiscal year 1985, plus the number and dollar value of purchases not awarded to the lowest responsible bidder. As the table shows, 8.4 percent of the audited purchases bid by the districts were not awarded to the lowest responsible bidder. These purchases totalled 11.6 percent of the dollar value of all bid projects audited.

Bids Not Awarded to the Lowest Responsible Bidder

Audited Districts	Audited Purchases Bid by Districts		Bids Not Awarded to Lowest Responsible Bidder			
	Number	Dollar Value	Number	%	Dollar Value	%
USD 219, Minneola	1	\$ 11,950	0	0	\$ 0	0
USD 354, Claflin	8	241,158	5	62.5	192,133	79.7
USD 422, Greensburg	6	104,914	1	16.7	25,380	24.2
USD 491, Eudora	6	108,678	0	0	0	0
USD 493, Columbus	22	266,949	1	4.5	28,982	10.9
USD 445, Coffeyville	15	474,752	0	0	0	0
USD 489, Hays	19	221,371	1	5.3	17,955	8.1
USD 500, Kansas City	<u>18</u>	<u>847,244</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Totals	95	\$2,276,476	8	8.4	\$264,450	11.6

The table shows that the eight purchases not awarded to the lowest responsible bidder had a total dollar value of \$264,450. If these purchases had been awarded to the lowest responsible bidders, a total of \$16,092 would have been saved by the audited districts.

Claflin had the highest number of apparent violations by far: five purchases totaling more than \$190,000 were not awarded to the lowest responsible bidder. In each of these cases, the apparent violation was caused by a misunderstanding of the bidding law or a failure to adequately document the district's justification for not purchasing from the lowest bidder. In one case, the school Superintendent talked with bidders after receiving their sealed proposals, and allowed them to reduce their original bids on two copier machines. In the other cases, the school district rejected the lowest bid proposals without adequately demonstrating that those proposals did not meet the district's specifications.

On a \$150,000 roofing project, for example, the Claflin school district rejected the lowest bid proposal because it did not include provisions for adequate drainage or for a certificate of insurance. Yet the auditors found that the written specifications did not require a certificate of insurance, and that the district could not document that the lowest bid proposal did not meet drainage specifications. The final cost of this project would have been about \$2,000 less if the lowest bid proposal had been accepted. On another project

involving the removal of asbestos, the Superintendent indicated that the lowest bid proposal was rejected because the school district was not satisfied by the bidder's safety assurances. However, the bid proposal contained specific safety assurances which were copied verbatim from the district's written specifications. The district would have saved more than \$4,200 by accepting the lowest bid proposal.

Three of the audited districts failed to award motor vehicle bids to the lowest responsible bidder even though the bids met the school district's specifications. The Greensburg school district rejected a bid on two 16-passenger school buses in favor of a higher bid on two 19-passenger school buses, because the school board decided (after receiving the bid proposals) that it needed 19-passenger buses to service its routes. If the 16-passenger buses had been chosen, the cost to the district would have been about \$2,700 less.

The Columbus school district accepted the highest of four bids on a school bus because the school board considered the brand to be superior in quality to the brands offered in the other bid proposals. If the lowest bid had been accepted, the district would have saved more than \$1,800. Similarly, the Hays school board rejected the lowest bid proposal on a new general purpose tractor because it preferred a higher bid proposal on a used tractor of superior size, horsepower, and snow removal capability. In this instance, the Hays district spent about \$3,400 more than the lowest bid proposal.

During fiscal year 1986, the Hays school district awarded a project to a vendor that was not the lowest responsible bidder. This case involved the purchase of an \$ 8,936 sprinkler system for the high school football field. Although the purchase occurred during fiscal year 1986 and is not included in the auditors' bid totals, the auditors reviewed the case during their visit to the Hays school district.

In this instance, the lowest bid proposal was made by a sprinkler system company based in Salina. Although the minutes of the board indicate that board members recognized the Salina firm as a responsible bidder, the board awarded the purchase to the lowest "local" bidder instead.

According to the district Superintendent, the Hays school board accepted the local bid proposal because the difference between the two bids was only \$42, and the board felt this difference would ultimately be negated by the extra costs and inconvenience associated with obtaining maintenance service from an out-of-town vendor. The Superintendent said the board felt it should have discretionary authority in cases where strict adherence to the statute would result in higher long-term costs. Furthermore, the district's written policies say that "the Board may choose not to accept low bids when there are justifiable reasons to choose otherwise."

In Three Districts, Multiple Purchase Orders Appeared to Circumvent Competitive Bidding Requirements

The auditors reviewed purchasing records in the audited school districts to determine whether multiple purchase orders were used so that the bidding limit of \$5,000 would not be exceeded. Three of the audited school districts had 11 multiple purchases that appeared to circumvent the competitive bidding requirements. These 11 multiple purchases amounted to \$87,284. The table on the next page shows the number of times that this problem was found in each district, and the total amount of the expenditures.

Multiple Purchase Orders Written by Audited Districts

<u>Audited Districts</u>	<u>Number of Multiple Purchases</u>	<u>Amount</u>
USD 489, Hays	1	\$ 8,228
USD 491, Eudora	2	12,358
USD 500, Kansas City	<u>8</u>	<u>66,698</u>
Totals	11	\$87,284

As the table shows, most of the multiple purchases occurred in Kansas City, which had eight multiple purchases totaling nearly \$67,000. This same problem was identified in a 1982 performance audit of the Kansas City school district.

Most of the multiple purchases occurred in the Kansas City school district. The district used multiple purchases to obtain word processors, food service supplies, musical instruments, cabinetry, drafting equipment, cleaning products, computer equipment, and automotive parts. For example, Kansas City bought three word processors for one of the district's departments over a two-week period. Their prices ranged from \$4,070 to \$4,995, for a total cost of \$13,285. When asked why the three purchases had been made on separate purchase orders, a department official said that the vendor was offering \$2,000 worth of software with each purchase and that there was not adequate time to request bids for the word processors.

Another example in Kansas City involved musical instruments. Two purchase orders were requested on the same day to purchase musical instruments and supplies from the same vendor. One of the purchase orders was for \$3,153 and the other amounted to \$2,247 for a total cost of \$5,400. School district officials could not explain why these two purchase orders were used instead of one purchase order. If one purchase order had been used, the district would have been required to request bids for the musical instruments.

The Kansas City school district had the same problem with multiple purchases in 1982. The auditors reviewed the findings of the previous Kansas City school district performance audit issued by the Legislative Division of Post Audit, which covered the district's fiscal year 1982 bidding practices. The auditors discovered that two of those findings had been repeated in fiscal year 1985. These findings are listed below.

<u>Fiscal Year 1982 Previous Audit Findings</u>	<u>Fiscal Year 1985 Current Audit Findings</u>
<p>--Seven purchase orders totaling \$6,582 for food preparation equipment and supplies were issued on the same day to the same vendor.</p>	<p>--Thirteen purchase orders totaling \$7,827 for food preparation equipment and supplies were issued on the same day to the same vendor.</p>
<p>--Two purchase orders totaling \$6,361 were issued on the same day for auto supplies.</p>	<p>--Two purchase orders totaling \$6,050 were issued on the same day for auto supplies.</p>

The auditors interviewed the supervisors of the food service and the transportation departments to learn why these purchases were made on multiple purchase orders. The Food Service supervisor had no explanation, but did say that these items were bid for the 1985-1986 school year and that the prices appeared to be more favorable to the school district. The transportation supervisor said that maintenance parts were obtained on a daily basis and that purchase orders were written every two weeks. The supervisor told the auditors that whenever the cost of the parts for the two-week period exceeded \$5,000, a second purchase order would be initiated to keep the purchase order amounts below the \$5,000 limit.

The Eudora and Hays school districts apparently used multiple purchases to stay under \$5,000. The Eudora school district used multiple purchases to obtain a new intercom system and to resurface parking areas. In the first case, the Eudora district wrote a \$5,790 purchase order for a new intercom system. The price for the purchase and installation of the intercom system was paid in two checks, one for \$3,000 and another for \$2,790, dated about two months apart. The second case involved two purchase orders written on the same day for resurfacing parking areas around an elementary school. Each purchase order was written for \$3,000. When the resurfacing was completed, the district wrote one check to the vendor for \$6,000.

The Hays school district wrote three purchase orders on the same day to obtain master clocks for three schools. One purchase order was for \$2,760 and two purchase orders were for \$2,734 each. The Superintendent said that the timing of the three purchases was a matter of convenience, and that each building had needed a master clock for some time. The Superintendent also said that because the purchases were intended to update the existing systems, no other vendor's product would have been satisfactory.

Conclusion

Based on the eight school districts sampled in this audit, it appears that lack of compliance with State bidding laws is a significant problem. More than one-fourth of all audited purchases greater than \$5,000 were apparently in violation of the bidding law. Nearly 20 percent of all audited purchases were made without obtaining sealed bids as required by law. In addition, for projects that were bid by these districts, more than eight percent of the purchases were not awarded to the lowest responsible bidder. Furthermore, several of the districts apparently used multiple purchase orders to avoid the bidding requirement on purchases greater than \$5,000.

What Steps Can Be Taken to Help Ensure That School Districts Comply with the State's Purchasing Laws?

To answer this question, the auditors reviewed the statutes governing school district purchasing, examined the written purchasing policies and the financial-compliance audits of the audited districts for the past three years, and interviewed officials of both the Department of Education and the Department of Administration's Municipal Accounting Section. In general, the auditors noted three areas in which improvements could be made to help ensure school districts' compliance with State purchasing laws: clarifying the law,

establishing better procedures, and strengthening compliance reviews. Each of these areas is discussed in the sections below.

Action May be Needed to Clarify the Bidding Law

During the course of this audit, the auditors found that none of the audited school districts used a competitive bid process when purchasing textbooks and other published educational materials. School officials generally indicated that bidding for such materials is not feasible or desirable because of the need for flexibility and discretion in selecting teaching materials. In most cases, textbook selections are made by committees of teachers and administrators who base their decisions on considerations of quality rather than cost. Because K.S.A. 72-6760 applies to the purchase of materials, goods, and wares, this practice does not appear to comply with the current bidding law.

Recommendation

If school districts believe that textbooks should not be acquired through competitive bidding, they should seek legislation amending K.S.A. 72-6760 to specifically exempt textbooks and other published educational materials from the requirement to obtain sealed competitive bids on purchases greater than \$ 5,000.

School Districts Need to Establish Better Procedures for Ensuring That Sealed Bids Are Taken as Required, and That Purchases Are Made from the Lowest Responsible Bidder

Four of the eight school districts had no written procedures to ensure compliance with the State's bidding requirements. Three districts had written policies requiring that bids be sealed and that awards be made to the lowest responsible bidder, but two of these did not have any provision indicating when sealed bids were to be solicited. The Hays school district has even developed written policies granting the school board authority not to comply with the bidding law whenever the board determines that non-compliance is in the best interest of the district.

Only one of the audited school districts had written procedures indicating how sealed bids were to be solicited or how bid award decisions were to be documented. The fact that some cases of non-compliance noted by the auditors were apparently due to inadequate documentation or misunderstanding of how to conduct bidding indicates that written procedures in this area are necessary. In particular, it may be advisable for school districts to establish procedures to be followed when bid proposals do not meet written specifications or when bidders are judged not to be responsible. The Department of Education may be able to assist the school districts in developing such procedures.

Recommendations

1. In order to ensure compliance with K.S.A. 72-6760, school districts should establish and follow written procedures specifying who is responsible for ensuring compliance with the bidding law, how bids are to be solicited, and how bidding records are to be maintained.
2. The Department of Education should inform all Kansas school districts about the findings of this audit and should offer guidance to the districts in establishing the written bidding procedures specified above.

The Department of Administration Needs to Ensure That School Districts' Annual Financial Audits Include a Specific, Detailed Review of Compliance with State Bidding Laws

When conducting audits of Kansas school districts, public accountants are required by K.S.A. 75-1123 to follow the minimum standard audit program prescribed by the Director of Accounts and Reports. The current minimum standard audit program requires public accountants to determine whether competitive bids are obtained by the school districts for appropriate purchases greater than \$5,000, in accordance with K.S.A. 72-6760. The program also tells the public accountants to be mindful of numerous small purchases to individual suppliers, which in total could be affected by the bidding requirements.

All school district financial audits are reviewed by the Municipal Accounting Section of the Division of Accounts and Reports to verify that these audits followed the minimum standard audit program. K.S.A. 75-1121 requires the Director of Accounts and Reports to conduct investigations as necessary to determine compliance with the municipal accounting laws. An official with the Municipal Accounting Section told the auditors that there is no way to ensure that the checks required by the minimum standard audit program have been carried out, because the Municipal Accounting Section does not examine audit workpapers. This same official told the auditors that he could not recall any instance in which a financial audit of a school district disclosed a failure to comply with the State bidding laws.

The auditors reviewed the fiscal years 1983, 1984, and 1985 financial audit reports for the eight school districts included in this report. The financial audit reports made no mention of any failure on the part of any of these districts to follow the bidding laws of Kansas. Legislative Post Audit's review showed that seven of the eight audited school districts apparently violated State bidding laws during fiscal year 1985. Therefore, it appears that the accountants who conducted the financial audits of these school districts may not have carried out the minimum standard audit program as required by K.S.A. 75-1123. The Municipal Accounting Section was unable to verify the accountants' compliance because the Section does not review the working papers of public accountants.

In sum, the Department of Administration's current policies do not permit the Director of Accounts and Reports or the Municipal Accounting Section to conduct the types of workpaper reviews that are necessary to ensure that public accountants are following the minimum standard audit program. This may result in a lack of accountability for public accountants, as well as a lack of sufficient audit coverage on school districts' compliance with competitive bidding laws.

Recommendation

To help ensure that school districts adhere to the competitive bidding requirements of K.S.A. 72-6760, the Director of Accounts and Reports should:

- consider amending the minimum standard audit program to increase emphasis on the review of school districts' purchasing and bidding practices
- consider directing the Municipal Accounting Section to review the workpapers of public accountants on a random or spot-check basis, to ensure that the public accountants are conducting the testwork required by the minimum standard audit program and K.S.A. 75-1123.

APPENDIX A

Agency Responses

Draft copies of the audit report were sent to two State agencies--the Department of Education and the Department of Administration. Their responses are included in this Appendix.

Two of the eight audited school districts supplied written responses. Those responding were Coffeyville and Claflin school districts. The Claflin response raised questions about several statements in the draft audit report. After checking with the Claflin Superintendent, the auditors determined that no significant changes were needed in the report.

STATE OF KANSAS



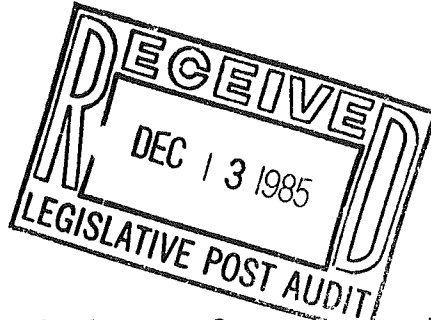
DEPARTMENT OF ADMINISTRATION
Office of the Secretary

JOHN CARLIN,
Governor
MARVIN A. HARDER,
Secretary of Administration

December 11, 1985

Room 263-E
State Capitol Building
Topeka, Kansas 66612
(913) 296-3011

Mr. Meredith Williams
Legislative Post Auditor
Mills Building - 109 West 9th
Topeka, Kansas 66612



Dear Mr. Williams:

We have reviewed the draft of the performance audit report, School-Districts' Compliance with Bidding Laws, and we agree with the findings and recommendations. The report demonstrates that the school districts are shortcutting the requirements of law for a variety of reasons and in a variety of ways. The recommendations on page 11 seems to us to be the key in improving compliance with bidding laws. Also, formal training of school district financial officials seems to be needed.

We are now revising the Minimum Standard Audit Program. We will be strengthening the audit procedures with regard to bidding practices in the revision to be published in mid-1986.

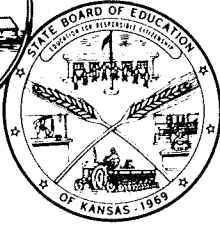
We have discussed the idea of workpaper review for sometime, but have not adopted a policy on it. We generally favor the idea, but we are concerned about the effect on staff resources. A detailed review of workpapers including travel, review, reporting, and resolution of problems would easily require 40 hours of staff time. Any significant program to review workpapers would involve, without additional staff, less emphasis on other review work.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marvin A. Harder".

Marvin A. Harder, Secretary
Department of Administration

MAH:JRC:cv

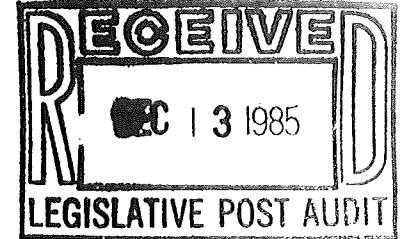


Kansas State Department of Education

Kansas State Education Building

120 East 10th Street Topeka, Kansas 66612

December 13, 1985



Dr. Meredith Williams
Legislative Division of Post Audit
301 Mills Building
Topeka, Kansas 66612

Dear Dr. Williams:

Enclosed is a draft copy of a memorandum to chief school administrators and Unified School Districts Guidelines for Competitive Bidding which was recommended in the performance audit report, "School Districts' Compliance with Bidding Laws."

If you or the Legislative Post Audit Committee have any recommendations for the memorandum/guidelines, please notify us and appropriate changes will be incorporated.

If the report is accepted by the Legislative Post Audit Committee, we anticipate mailing the audit report and guidelines within two weeks of approval.

Sincerely,

Harold L. Blackburn
Commissioner of Education

HLB:DMD:tjm

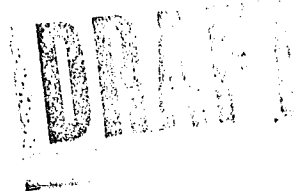
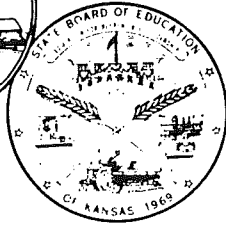
Enclosure



Kansas State Department of Education

Kansas State Education Building

120 East 10th Street Topeka, Kansas 66612



TO: Chief School Administrators

FROM: Dale M. Dennis, Assistant Commissioner
Veryl D. Peter, Director, LEA Finance

SUBJECT: Competitive Bidding

The Legislative Division of Post Audit recently conducted a performance audit report on school districts' compliance with Kansas bidding laws at the request of the Legislative Post Audit Committee. The Post Audit staff audited eight school districts across the state. One of the recommendations as shown on page 11 of the report states the following.

"The Department of Education should inform all Kansas school districts about the findings of this audit and should offer guidance to the districts in establishing written bidding procedures."

Therefore, in order to comply with this recommendation, we are forwarding a copy of the audit report and suggested guidelines for competitive bidding.

We hope this information will be of assistance to you and your board of education.

UNIFIED SCHOOL DISTRICTS
GUIDELINES FOR COMPETITIVE BIDDING

"K.S.A. 1984 Supp. 72-6760. SCHOOL DISTRICTS; EXPENDITURES; BIDS; EXEMPTIONS. (a) No expenditures involving an amount greater than \$5,000 for construction or 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) shall not apply to the purchase of products required to be made by the board of education under the provisions of K.S.A. 75-3317 to 75-3322, inclusive, and amendments thereto."
(emphasis added)

Definitions

The definitions of construction, purchase of materials, goods and wares would include the following.

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.

Materials, Goods and Wares

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.

"K.S.A. 72-8404. MOTOR VEHICLE LIABILITY INSURANCE AND MEDICAL PAYMENTS INSURANCE. (a) The board of education of every school district or its contract carrier may purchase motor vehicle liability insurance and medical payments insurance for the protection and benefit of the school district and the officers, agents and employees for the school district and the students, officers agents and employees thereof who are transported in or operate school buses owned, operated, maintained or controlled by the school district and of persons while riding in or upon, entering or alighting from such vehicles. (b) The board of education of any school district, in which all or the greater part of the population of a city having a population of more than two hundred fifty thousand (250,000) is located, may acquire insurance authorized to be obtained under authority of this act only by competitive bids and only after it has invited sealed proposals for such insurance by advertising once each week for two consecutive weeks in a newspaper having general circulation in the school district. Such insurance shall be purchased from the lowest responsible bidder, but any or all bids may be rejected."

The above statute authorizes school districts to bid motor vehicle liability insurance and medical payment insurance for the protection and benefit of the school district. The board of education of any school district which has a population of over 250,000 is required to obtain sealed bids.

Competitive Bidding Recommendations

1. Recommend boards of education consider a lower dollar amount when competitive bids are required. State law requires a minimum of \$5,000. Some boards may desire to go to a lower dollar amount.
2. Write clear and concise bid specifications.
3. Allow adequate time for the bidders to submit sealed bids.
4. Accept the lowest responsible bidder as required by law.
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 rebid the project if an error is discovered in the bid specifications prior to bid opening.

11. 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.
12. Do not grant preferential bids to local contractors or businesses.
13. Ensure that all out-of-state bidders comply with preferential bid law (K.S.A. 75-3740a).
14. Purchase orders should not be split to get under the \$5,000 limit for the purpose of circumventing the bidding law (K.S.A. 1984 Supp. 72-6760).
15. Ensure that all construction contractors provide a performance bond for construction, reconstruction, and remodeling projects which exceed \$10,000 as required by K.S.A. 60-1111.
16. Review the School Bond Guide provided by the Kansas State Department of Education prior to any major construction projects which require a vote of the patrons.
17. Require all contractors to provide a surety bond (Kansas Statutory Bond, Labor and Materials Bond) for construction projects in an amount equal to the cost of the project. Contractors should file a Statutory 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.
18. Require sealed bids and do not allow telephone quotes (K.S.A. 1984 Supp. 72-6760).
19. 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."
20. Ensure that amendments or addendums to original bid specifications be submitted in writing by the school district and acknowledged by each bidder.
21. Include a five percent bid bond in all construction contract bids.
22. Ensure that the board of education reserves the right to reject any or all bids. In some cases, school districts may not have sufficient funds to fund the project or may desire to delay the project.
23. 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 and 44-201.

Unified School District 354

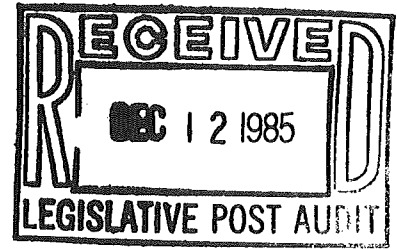
CLAFLIN, KANSAS 67525

WILLIAM WILSON
Claflin High School Principal

RICHARD CONNELL
Superintendent

HILARY DREILING
Claflin Grade School Principal

December 11, 1985



Mr. Meredith Williams
Legislative Post Audit
Mills Building, Suite 301
Topeka, KS 66612-1285

Dear Mr. Williams:

This will acknowledge your request for comments, corrections, and clarification of the performance audit on School District Compliance with Bidding Laws.

Regarding Unbid Remodeling and Repair Projects for amount greater than \$5,000. According to the auditor's report it appeared that USD 354 Claflin did not solicit sealed bids. The Board requested suggestions from three contractors for a feasible way to construct this addition to the high school building. All three received the proposed project and agreed to submit plans and a bid. Only one contractor followed through and submitted a bid in writing. The other two contractors offered a bid by phone and agreed to send their bid in writing but failed to do so. Therefore, only one bid was received. At the time the project was being planned and completed we did not recognize the importance of thorough documentation of the bids we did not receive in writing.

Regarding bids not awarded to the Lowest Responsible Bidder. The auditor's statement that the "Superintendent negotiated with the bidders after receiving their sealed bid proposals" is not an accurate statement. At no time did anyone negotiate with the bidders. Either following or upon receipt of the low bidder's bid, they informed the Superintendent that the maintenance agreements for one year would be included in their bid even though it was a separate item on their written bid proposal. The Board of Education was informed and they accepted that bid. Again, proper documentation of this was not adequately provided in the file.

On the roofing project, although it did not appear in the specifications, all three firms were notified of a request for a certificate of Insurance and a drawing showing how positive slope drainage would be accomplished. Two of the firms supplied those two items, the low bidder did not, therefore that bid was rejected. On a project of this scope a Certificate of Insurance was extremely important and as was the requested drawing. The two items mentioned should have been on the specifications, however, we failed to include these items, but did contact all three firms and they agreed to include them when they submitted their bid.

Regarding the asbestos removal project. The bid specifications clearly show that the Board of Education requested bids on the

Mr. Meredith Williams
Page 2
December 11, 1985

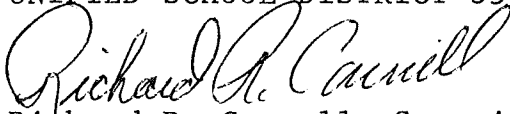
removal of asbestos in several areas of both the grade and high school buildings. One bid, which was obviously less, did not include removal of asbestos in three locations and their bid clearly shows "no bid" on those items. It was a high priority of the Claflin School Board to have asbestos removed in those areas omitted by the low bidder. We did have some questions about some safety measures, however, the fact that the low bidder omitted three important areas for asbestos removal negates any other consideration for the lowest responsible bid. I fail to see how this bid can be questioned for non-compliance.

The table on page 6 shows USD 354 Claflin failed to award 5 bids to the Lowest Responsible Bidder, however mention is made of only three.

It is obvious that USD 354 Claflin needs more accurate documentation when the low bid has been rejected, however the Board of Education and administration examines each bid received. In all cases mentioned in this audit the Board and administration judged the district was in compliance with the bidding statute and that they were acting in the best interest of the school district.

Sincerely,

UNIFIED SCHOOL DISTRICT 354



Richard R. Connell, Superintendent

DR. JOHN E. BATTITORI
SUPERINTENDENT

OFFICE: (316) 251-6900
HOME: (316) 251-1872

December 10, 1985



Meredith Williams
Legislative Post Auditor
Mills Building
Topeka, Kansas 66612

Dear Mr. Williams:

This letter is in response to the report received from your office concerning school districts' compliance with bidding laws.

In response to the items that our school district had not sought bids on textbooks, related published materials, and computers, computer systems, and word processing equipment, in the future our district will follow bidding procedures in the purchase of textbooks and related published materials. We intend to pursue the recommendation listed in the report in seeking legislative relief to this situation as it would be extremely difficult, if not impossible, to bid textbooks when a particular publisher has been chosen through committee efforts to fulfill our textbook needs.

Our district intends to follow all bidding procedures regarding the future purchasing of computers, computer systems, and word processing equipment.

Again, in closing, our district intends to comply with the state's bidding procedure.

Sincerely,

A handwritten signature in cursive script that reads "John E. Battitori".

Dr. John E. Battitori
Superintendent

JEB/nw

COFFEYVILLE UNIFIED SCHOOL DISTRICT 445
BOX 968 • 615 ELLIS • COFFEYVILLE, KANSAS 67337