

Office Hours – School Construction – March 22, 2023

Agenda

- Cassandra Ryan Slide Deck: “Make Davis-Bacon Whole” & Federal Interest
- Q & A

Participants

- 26 LEA representatives (0930)
- Cassandra Ryan, AOE Director of Regulatory Compliance and Risk Management
- Abby Houle,
- Jill BriggsCampbell, COVID-19 Federal Emergency Funds Manager

“Make Davis Bacon Whole”

Issues arising from the federal requirements from Davis-Bacon are varied and are dependent on where the LEA is in the process. “Make Davis Bacon Whole” is the directive issued by USED in response to handling any issues arising from Davis-Bacon compliance. USED requires that Davis-Bacon be complied with no matter where you are in the process. (the largest issues being faced by LEAs are 1. Prevailing wage and 2. Weekly Pay). If the LEA encounters an issue, you must 1. Immediately correct, 2. Document, document, document and, if necessary, 3. Contact the AOE for collaborative help.

Federal Interest- Real Property

Examples of Real Property include an HVAC system, a new roof, etc. The Federal Interest in real property must be protected and requires that the property be 1. Used for its original purpose for 2. The total useful life of the real property. If these two requirements are not met, the process of Disposition must be undertaken. That occurs in one of 3 ways:

1. LEA compensates the FAA for the real property and retains the title
2. LEA sells the property and compensates FAA
3. Transfer of title to FAA

One factor to consider in Vermont is the statewide school testing for PCBs. The PCB determination could impact whether the useful life of the real property is met. This does not mean the work should not be done, but is something to be considered when thinking about the real property and the federal interest.

Federal Interest- Equipment

The federal interest in equipment purchases must be considered if the equipment is sold. If the equipment is sold and its useful life worth exceeds \$5,000, you would enter the disposition process as it relates to the federal interest. Contact the AOE for assistance and support with this process.

Question and Answers:

Q: (Michael Briggs, SVSU) The BoE Rule 6460 states that the RFP requests, among other things, an itemized fixed fee for CMR services, a fixed fee for O&P, and an itemized fixed fee for GC's/GR's. However, the last sentence of 6460 states, "Nothing herein shall prohibit a school board from requesting proposals that include a percentage fee." So, are we required to request a fixed fee, or a percentage fee? CM's normally work on a percentage basis for their fee/profit. I use a form (to be filled out by the CM) that identifies and itemizes the costs of overhead, general conditions, and general

requirements.

A: Percentage fee. At some point the School Board must accept a max price, this percentage fee would be included in that.

Q: (Michael Briggs, SVSU) BoE Rule 6480 states, "Where a school board has contracted with a construction manager, the board remains responsible for public bidding pursuant to 16 V.S.A., § 559 for all purchases or contracts exceeding \$ 10,000 for school building construction, improvements, materials, supplies, and equipment. All bids shall be opened and reviewed at a warned school board meeting." Normally, a CMR would put together bid packages for the various trades involved and put them out to bid to subcontractors whom they feel are qualified. Am I reading this correctly that the CMR must comply with public bidding requirements? To me, this kind of defeats the purpose of the CMR approach.

A: If the contract is held by the CMR, the sub-contractors do not have to prove compliance with these requirements. Yes, the CMR would be responsible, in their own compliance, with assuring compliance.

Q: (Michael Briggs, SVSU) Lastly, 16 V.S.A. § 559 (e) (2) states, "A school board may name in the specifications and invitations for bids under this section the particular make, kind, or brand of article or articles to be purchased or contracted." Does this mean that we may indeed proprietarily spec key materials and equipment so that we can begin to create some uniformity across our campuses?

A: The LEA names requirements in their RFP.

Q: (Jacob Wood, STJSD) What would the advice be then on evaluating multiple bids at a single board meeting? Additional context: LEA scenario was opening bids, evaluating bids, and awarding in same full board meeting because bidder indicated they would pull bid if not notified when bid was opened.

A: Cassandra and Jill acknowledged that would be a very long and cumbersome meeting, which was not suggested. However, it remains up to the LEA how they want to proceed with this process and that the main, strict rule was that the bids must be opened in a full Board meeting in order to protect confidentiality. Additional suggestions from peers: (Theresa Palagonia, NCSU) We recently opened bids at a board meeting then a few days later had a committee meeting to review the bids and make a recommendation to the board at a special meeting a few days after that.

The AOE's legal counsel did weigh in on whether it can be a sub-committee or was required to be a full Board meeting. They responded that it must be a full Board meeting and could not be a subcommittee for the opening of the bids. Cassandra has inquired for more information on that so as to provide context, but has not received a response. The requirement that it be a full Board meeting is the only information available at this time.

Q: (Renee Gordon, SVSU) Can you help with a GMS issue? Project Approval issue.

A: There was an issue in the application because the submittal was being done as "Amendment 2" whereas Project Approval is typically done as "Amendment 1" with no other amendments needed on the application. Any issue like this that is typically specific to a single application, please contact AOE.FederalConstruction@vermont.gov.

Other general notes (hands raised, reminders, conversation, etc.):

- Required to open bids in full School Board meeting
- Agency has not given a blanket sole source waiver and has not issued one to any vendor. LEA must apply for this using this form:

<https://www.cognitofrms.com/VermontAgencyOfEducation/aoebidwaiverrequestform>

- LEA is required to comply with the *most restrictive* conditions
- If Construction Manager (CM) holds the bid, The LEA must comply with the *most restrictive* requirements
- Davis-Bacon compliance- correct immediately, document.