

REGIONAL CONVENTION FACILITY AUTHORITY ACT (EXCERPT)
Act 554 of 2008

141.1361 Board; meeting; election of chairperson and officers; actions requiring unanimous consent; business conducted at public meeting; availability of records and documents to public; system of accounts; annual audit; budget; contracts; use of competitive procurement methods; exceptions; purchases; preferences; procedures to monitor performance of contracts; procurement policy; employment of personnel; certain actions prohibited; citizens advisory council.

Sec. 11.

(1) Within not more than 30 days following appointment of the members of a board, the board shall hold its first meeting at a date and time determined by the individual appointed under section 9(1)(a). The board members shall elect from among the board members an individual to serve as chairperson of the board and may elect other officers as the board considers necessary. All officers shall be elected annually by the board. All actions of the board under this act shall require the unanimous consent of all serving members of the board, excluding any members prohibited from voting on an action due to a conflict of interest under section 15.

(2) The business of the board shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A board shall adopt bylaws consistent with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, governing its procedures and the holding of meetings. After organization, a board shall adopt a schedule of regular meetings and adopt a regular meeting date, place, and time. A special meeting of the board may be called by the chairperson of the board or as provided in bylaws adopted by the board. Notice of a special meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(3) A board shall keep a written or printed record of each meeting, which record and any other document or record prepared, owned, used, in the possession of, or retained by the authority in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) A board shall provide for a system of accounts for the authority to conform to a uniform system required by law and for the auditing of the accounts of an authority. The board shall obtain an annual audit of the authority by an independent certified public accountant and report on the audit and auditing procedures in the manner provided by sections 6 to 13 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.426 to 141.433. The audit also shall be in accordance with generally accepted government auditing standards and shall satisfy federal regulations relating to federal grant compliance audit requirements.

(5) Before the beginning of each fiscal year, a board shall cause to be prepared a budget for the authority containing an itemized statement of the estimated current operational expenses and the expenses for capital outlay including funds for the operation and development of convention facilities under the jurisdiction of the board, including the amount necessary to pay the principal and interest of any outstanding bonds or other obligations of the authority maturing during the next fiscal year or that have previously matured and are unpaid, and an estimate of the estimated revenue of the authority from all sources for the next fiscal year. The board shall adopt a budget as for the fiscal year in accordance with the uniform budget and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(6) A board shall provide for the purchase of, the contracting for, and the providing of supplies, materials, services, insurance, utilities, third-party financing, equipment, printing, and all other items as needed by the authority to efficiently and effectively meet the needs of the authority using competitive procurement methods to secure the best value for the authority. The board shall make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of authority contracts. A board shall provide for the acquisition of professional services, including, but not limited to, architectural services, engineering services, surveying services, accounting services, services related to the issuance of bonds, and legal services, in accordance with a competitive, qualifications-based selection process and procedure for the type of professional service required by the authority. An authority is not required to use competitive bidding when acquiring proprietary services, equipment, or information available from a single source, such as a software license agreement. An authority may enter into a cooperative purchasing agreement with the federal government, this state, or other public entities for the purchase of goods or services necessary for the authority. An authority may enter into lease purchases or installment purchases for periods not exceeding the anticipated useful life of the items purchased unless otherwise prohibited by law. In all purchases made by the authority, all other things being equal, preference shall be given first to products manufactured or services offered by firms based in the authority's qualified metropolitan area, including, but not limited to, the qualified city and each county in the qualified metropolitan area, and next to firms based in this state, if consistent with applicable law. The authority shall actively solicit lists of potential bidders for authority contracts

from each qualified city and each county in the qualified metropolitan area. Except as otherwise provided in this section, the authority shall utilize competitive solicitation for all purchases authorized under this act unless 1 or more of the following apply:

(a) Procurement of goods or services is necessary for the imminent protection of public health or safety or to mitigate an imminent threat to public health or safety, as determined by the authority or its chief executive officer.

(b) Procurement of goods or services is for emergency repair or construction caused by unforeseen circumstances when the repair or construction is necessary to protect life or property.

(c) Procurement of goods or services is in response to a declared state of emergency or state of disaster under the emergency management act, 1976 PA 390, MCL 30.401 to 30.421.

(d) Procurement of goods or services is in response to a declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.

(e) Procurement of goods or services is in response to a declared state of energy emergency under 1982 PA 191, MCL 10.81 to 10.89.

(f) Procurement of goods or services is under a cooperative purchasing agreement with the federal government, this state, or more public entities for the purchase of goods and services necessary at fair and reasonable prices using a competitive procurement method for authority operations.

(g) The value of the procurement is less than \$5,000.00, and the board has established policies or procedures to ensure that goods or services with a value of less than \$5,000.00 are purchased by the board at fair and reasonable prices. Procurement of goods or services with a value of less than \$5,000.00 may be negotiated with or without using competitive bidding as authorized in a procurement policy adopted by the board.

(7) A board may not enter into any cost plus construction contract unless all of the following apply:

(a) The contract cost is less than \$50,000.00.

(b) The contract is for emergency repair or construction caused by unforeseen circumstances.

(c) The repair or construction is necessary to protect life or property.

(d) The contract complies with requirements of applicable state or federal law.

(8) The board shall adopt a procurement policy consistent with the requirements of this act and federal and state laws relating to procurement. The procurement policy shall include a requirement for the authority to use its best efforts within the competitive solicitation requirements of this section to achieve fairness in the number and value of contracts for goods or services entered into by the authority with firms based in the qualified city and each county within the qualified metropolitan area, consistent with applicable law. The board shall adopt a policy to govern the control, supervision, management, and oversight of each contract to which the authority is a party. The board shall adopt procedures to monitor the performance of each contract including, but not limited to, a contract that exists on the transfer date, to assure execution of the contract within the budget and time periods provided under the contract. The monitoring shall include oversight as to whether the contract is being performed in compliance with the terms of the contract, this act, and federal and state law procurement law. The chief executive officer or other authorized employee of an authority shall not sign or execute a contract until the contract is approved by the board. A board for an authority shall establish policies to ensure that the authority does not enter into a procurement or employment contract with a person who has been convicted of a criminal offense incident to the application for or performance of a contract or subcontract with a governmental entity in this state. A board for an authority shall establish policies to ensure that the authority does not enter into a procurement or employment contract with a person who has been convicted of a criminal offense, or held liable in a civil proceeding, that negatively reflects on the person's business integrity, based on a finding of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or violation of state or federal antitrust statutes, or similar laws. The authority shall prepare an annual report to the board, the qualified city, and each county within the qualified metropolitan area detailing all contracts entered into by the authority during the immediately preceding fiscal year. As used in this subsection, if a person is a business entity, person includes affiliates, subsidiaries, officers, directors, managerial employees, and any person who, directly or indirectly, holds a pecuniary interest in that business entity of 20% or more. Nothing in this subsection shall be construed as creating a quota or set-aside for any qualified city or any county in the qualified metropolitan area.

(9) A board may employ personnel as the board considers necessary to assist the board in performing the power, duties, and jurisdictions of the authority, including, but not limited to, employment of a chief executive officer as authorized under section 13. The board shall adopt an employment policy that includes a requirement for the authority to use best efforts to achieve fairness in the hiring of employees from among residents of the qualified city and each county within the qualified metropolitan area, consistent with applicable law. Nothing in this subsection shall be construed as creating a quota or set-aside for any qualified city or any county in the qualified metropolitan area.

(10) A board shall establish policies to assure that the board and the authority shall not do either of the following:

(a) Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to employment, compensation, or a term, condition, or privilege of employment, or a contract with the authority because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status,

partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job, position, or contract.

(b) Limit, segregate, or classify an employee, a contractor, or applicant for employment or a contract in a way that deprives or tends to deprive the employee, contractor, or applicant of an employment opportunity or otherwise adversely affects the status of an employee, contractor, or applicant because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position.

(11) Not less than 60 days after the transfer date, an authority shall establish a citizens advisory council to provide public input and advise the board on the impact of redevelopment and management of a qualified convention facility upon the qualified city and each county within the qualified metropolitan area. The advisory council shall consist of 8 members, including 1 resident of the qualified city appointed by the local chief executive officer of the qualified city, 1 resident of the qualified city appointed by the legislative body of the qualified city, 1 county resident appointed as a council member by each local chief executive officer for each county within the qualified metropolitan area, and 1 county resident appointed as a council member by the legislative body for each county within the qualified metropolitan area. An elected state or local official is not eligible to serve as a member of the citizens advisory council. Members of the advisory council shall be appointed for terms of 4 years. A vacancy on the advisory council arising other than by expiration of a term shall be filled for the remainder of a term in the same manner as the original appointment. The business of the advisory council shall be conducted at a public meeting held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The advisory council shall adopt bylaws consistent with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, governing its procedures and the holding of meetings. After organization, the advisory council shall adopt a schedule of regular meetings and adopt a regular meeting date, place, and time. The advisory council shall keep a written or printed record of each meeting, which record and any other document or record prepared, owned, used, in the possession of, or retained by the advisory council in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. An advisory council shall organize and make its own policies and procedures and shall adopt bylaws not inconsistent with this act governing its operations. The advisory council may request and shall receive from the authority information and technical assistance relating to the development and management of the qualified convention facility. Failure of the advisory council to organize, meet, or perform statutory functions shall not prevent the board or the authority from performing authorized activities. A member of the citizens advisory council shall not be compensated for being a member nor shall a member be reimbursed for any expenses incurred as a member of the citizens advisory council.

History: 2008, Act 554, Eff. Jan. 20, 2009 ;-- Am. 2009, Act 63, Imd. Eff. July 2, 2009