



# **APPENDIX D: BIDDING HYPOTHETICALS**

## BIDDING HYPOTHETICAL #1

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A district wishes to purchase lockers and has a limited budget. The district wishes to purchase the deluxe model locker, but is unsure whether the bids for this type of locker would fall within its budget. How can the district solicit bids for the regular and deluxe models so as to avoid having to re-bid the contract if the deluxe lockers prove too expensive?

**Answer: The District can specify the regular lockers as the base bid and specify the deluxe lockers as an alternate. Make sure the bid instructions detail how the lowest bidder will be determined.**

## BIDDING HYPOTHETICAL #2

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After the bid opening, the low bidder (Bidder X) wishes to withdraw its bid claiming it made a mistake in submitting its bid. Bidder X claims that, due to the time restraints imposed by the bid deadline, it was unable to get quotes from its subcontractors. Bidder X thus estimated what it felt were the appropriate amounts to use in calculating its bid.

1 - Does this constitute a valid bid mistake so as to allow Bidder X to withdraw its bid? **No, a conscious omission by the bidder is not a valid bid mistake.**

2 - What if the next low bidder's bid was over 50% higher than Bidder X's, does this change the answer? **Courts would look at a large discrepancy and would be more likely to excuse the bid.**

3 - What if Bidder X's bid was close to the architect's estimate of what the job should cost, but still far short of the next low bid? **Courts would be less likely to view the bid as an excusable error.**

4 - What remedies are available to the district in this situation? **The District can allow the bidder to withdraw the bid, make a bid bond claim if the contractor refuses to sign the contract or rebid the project.**

## BIDDING HYPOTHETICAL #3

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After the bid opening but before the contract is awarded, the low bidder (Bidder X) approaches the district and requests that the liquidated damages term in the contract be deleted. Bidder X also requests that the insurance provisions be modified to lower the insurance coverage requirements. May the district do this? **No, the District cannot change the project scope after the bids have been opened.**

What other terms may the district negotiate with the Bidder X after the bids are opened? **The District can negotiate a lower price with the lowest bidder but not change scope or make any other material contract changes.**

What if Bidder X had approached the district prior to the bid opening and was told that the district would delete the liquidated damages provision? No other bidders asked about the liquidated damages and the district did not inform any of them about the conversation with Bidder X. **The District can only make changes to the specifications prior to the bids opening through an Addendum that is sent to all potential bidders who have picked up a bid packet.**

## BIDDING HYPOTHETICAL #4

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Four contractors pick up copies of bid documents for a yearly service agreement. Only two of the four contractors attend the bid meeting. At the meeting, one contractor submits an extensive list of questions requesting financial data and projections to assist the contractor in further refining its bid. Answering these questions would require the district to get additional financial information from the current provider of the services, who is also a bidder. The current contractor is reluctant to release the financial information because doing so would allow the other contractors to lower their bids.

1 - Does the district have to provide the information requested? **The District must only provide information that it has in its possession or control.**

2 - Does the district have to send the information to all contractors who picked up bid packages or only those who attended the bid meeting? **If the pre-bid meeting was mandatory, then the District must only send the information to the bidders who attended the meeting. If the pre-bid meeting was not mandatory, the District must send the information to all potential bidders who picked up a bid package.**

3 – What happens if there is a ‘tie’ between two bidders? **If there is a tie between two low bidders, the district must select one of the bidders through a blind random method such as drawing names.**

4 – Can I see a copy of last year’s bid? **Yes, last year’s bid information as well as all bidding information not identified by the bidder as proprietary, privileged or confidential is subject to a Freedom of Information Act request, after the Board awards the contract.**

## BIDDING HYPOTHETICAL #5

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A bid opening originally scheduled for January 15 at 3:00 P.M. had to be rescheduled due to a blizzard. The new bid opening was set for January 20 at 1:00 P.M. The district left telephone messages for all bidders to inform them of the new bid opening time. The bids were opened and publicly read at 1:00. At 2:00, Bidder X arrived to deliver its bid to the district. Bidder X claimed that the message it received only mentioned the change in date but not the earlier time change as well.

1 - May the district open the bid from Bidder X? **Any changes to the bid documents must be communicated in writing through an Addendum. The District may open the bid to determine if the contractor is the potential low bidder in which case the District could face a bid challenge from the second low bidder. If the late bidder is not low, then the problem becomes moot.**

2 - If so, what potential liabilities are involved? **If the late bidder is low, then the second low bidder may have a valid complaint. The ultimate remedy is to re-bid the project.**

## BIDDING HYPOTHETICAL #6

The district is requesting bids for its transportation service contract. As part of the transportation contract, the district wishes to include the purchase of 10 new vehicles in addition to the service and maintenance portion of the contract. The bid specifications request that the bidders include the purchase price of the vehicles in their bid for the service contract. The bid proposal sheets provide space for the bidders to breakdown their bid to show the allocation between the vehicles and the service. The bids come in as follows:

<u>Bidder</u>	<u>Total Bid</u>	<u>Vehicles</u>	<u>Service</u>
Bidder X	\$100,000	\$70,000	\$30,000
Bidder Y	\$110,000	\$60,000	\$50,000
Bidder Z	\$90,000	\$65,000	\$25,000
Bidder Q	\$120,000	\$100,000	\$20,000

1 - To whom should the district award the contract? **The answer depends on how the instructions to the bidders described how the low bidder would be determined, based on the vehicles alone or the vehicles and service.**

2 - Can the district award the Vehicle portion to Bidder Y and the Service portion to Bidder Q for a total of only \$80,000? **Yes, if the Bid Instruction states that the District reserves the right to split bids.**

## BIDDING HYPOTHETICAL #7

### TO BID OR NOT TO BID?

The following is a list of potential contracts District X is contemplating. Does the District need to publicly bid the contracts?

1) A contract for \$80,000 for an artist to paint murals on all school buildings. **No, the professional services exception applies to the artist.**

What if, rather than murals, the contract was simply to re-paint the buildings? **The District would have to publicly bid this work.**

2) A contract for \$48,000 for the repair of the auditorium? **No, the small construction projects (under\$50,000) bidding exception applies.**

3) A contract for \$35,000 for new printers and cables for the computer lab? **No, the data processing equipment and connections bidding exception applies.**

4) An exclusive contract for the installation and maintenance of vending machines throughout campus? **It depends on the structuring of the contract. If the District does not expend any funds and instead receives revenue from the contract, then the contract does not have to be bid.**

5) Following deregulation, a contract for \$100,000 for the purchase of electricity from a private source? **No, the utilities bidding exception applies.**

6) A \$100,000 contract for a lighting retrofit to install energy efficient lights? **No, the Energy Savings Contracts bidding exception applies.**

7) A \$90,000 contract for a Construction Manager to oversee the construction of the new building? **It depends on whether or not the Construction Manager will be performing any work in which case the work that the Construction Manager will perform must be publicly bid. If the Construction Manager is not performing work then the professional services bidding exception applies.**

8) A \$75,000 service contract with the manufacturer of the HVAC system for upkeep and repair? **No, a bidding exception applies to contracts with manufacturers for servicing and repair of equipment.**

- 9) A contract for \$85,000 for the purchase of a used school bus? **No, the contract for equipment previously owned by another entity bidding exception applies.**
- 10) A \$40,000 contract with the city for garbage removal? **No, the contract with other governmental agency bidding exception applies.** What if the contract was with a private company rather than the city? **The contract must be publicly bid provided that it is over \$25,000.**
- 11) A contract for \$150,000 to repair a roof damaged by severe winds? **No, the District may use the emergency expenditures exception and receives approval of the contract by the Board with an affirmative vote by  $\frac{3}{4}$  of all Board members (6 yes votes).**

## BIDDING HYPOTHETICAL #8

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### TYPICAL QUESTIONS ASKED BY VENDORS

1. Does this project require bonds? **Typically a project will require a Performance and Labor and Materials Payment bonds for all public works projects as defined by Illinois statutes and the Illinois Department of Labor.**
2. Is the award always based on price only? **Publicly bid contracts are awarded based on the lowest, responsible and responsive bidder.**
3. Can you send me a re-cap of the bid awards? **Yes, if you submit a Freedom of Information Act (FOIA) request.**
4. Will there be a pre-bid meeting? **This is up to the district to decide.** Is it mandatory? **This is up to the district to decide.**
5. When do I find out if I won? **After the Board of Education awards the contract.**