

Bidding & Contracting: From the Basics to New Legislation



December 1, 2023 | **NIU NAPERVILLE**



Introductions

Nicole Kennedy, Role: Speaker
- *Purchasing Manager,*
Community Unit School District 300



Ron Johnson, Role: Speaker,
- *Director of Support Operations,*
Indian Prairie School District 204



Howard Metz – Speaker
- *Attorney-Partner, Robbins Schwartz*

Robbins Schwartz



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The Duty to Publicly Bid

- Section 10-20.21 of The School Code, 105 ILCS 5/10-20.21, provides school districts with the authority:
- To award all contracts for purchase of supplies, materials or work or contracts with private carriers for transportation of pupils involving expenditures in excess of \$25,000 or a lower amount as required by board policy to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality, and serviceability.

Threshold raised
to \$35,000
starting
01/01/2024



...Except the Following:

- Contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important role;
- Contracts for the printing of finance committee reports and departmental reports;
- Contracts for the printing or engraving of bonds, tax warrants and other evidences of indebtedness;
- Contracts for the purchase of perishable foods and beverages;



...Except the Following:

- Contracts for materials and work which have been awarded to the lowest responsible bidder after due advertisement, but due to unforeseen revisions, not the fault of the contractor for materials and work, must be revised causing expenditures not in excess of 10% of the contract price;
- Contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with manufacturer or authorized service agent of that equipment where the provision of parts, maintenance or servicing can best be performed by the manufacturer or authorized service agent;



...Except the Following:

- Purchases and contracts for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and interconnect equipment, software, and services;
- Contracts for duplicating machines and supplies;
- Contracts for the purchase of fuel, including diesel, gasoline, oil, aviation, natural gas, or propane, lubricants, or other petroleum products;
- * • Purchases of equipment previously owned by some entity other than the district itself;



...Except the Following:

- Contracts for repair, maintenance, remodeling, renovation or construction, or a single project involving an expenditure not to exceed \$50,000 and not involving a change or increase in the size, type or extent of an existing facility;
- Contracts for goods or services procured from another governmental agency;
- Contracts for goods or services which are economically procurable from only one source, such as the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone or telegraph;



...Except the Following:

- Where funds are expended in an emergency and such emergency expenditure is approved by 3/4 of the members of the board;
- State master contracts authorized under Article 28A of the School Code;
- Contracts providing for the transportation of pupils, which contracts must be advertised in the same manner as competitive bids and awarded by first considering the bidder or bidders most able to provide safety and comfort for the pupils, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price. However, at no time shall a cause of action lie against a school board for awarding a pupil transportation contract per the standards set forth in this subsection (a) unless the cause of action is based on fraudulent conduct.



The Bidding Process

- Bidding Submittals
 - Sealed Bids
 - Electronic Bids
 - Timeliness of Bids
 - Modification, Withdrawal or Re-submittal of Bids Before Bid Opening



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Awarding the Bid – Criteria

- Lowest
 - Alternative Bids
- Responsive
 - Material Defects – Non waivable
 - Minor Variances – Waivable
- Responsible
 - Pre-qualification of Bidders
- Post-Bid Pre-Award Negotiations



Preparing Bid Specifications

- Certainty Required
 - You may only get what you ask, even if you meant something else!
- Sole Sourcing
 - Be Careful of Using “Or Equal” in Your Bid Documents!
- Getting Assistance in Preparation of Bid Specifications
 - Outside Professionals/Consultants
 - Potential Bidders?



Pre-Bid Meeting?

- Mandatory v. Optional
- In Person or Remote
- Individual Site Tours
 - Keep Questions to a Minimum
- Keep a Level Playing Field!



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Pre-Qualification of Bidders?

- Allowed, But May Lead to Unnecessary Challenges
- Advisable Where Time Between Bid Opening and Award is Short
 - Pre-Qualification Round Takes Place Well In Advance
- Pre-Qualification Criteria Must be Established and be Reasonable



Responding to Questions/Bid Addenda

- Bidders list
- Addendums to be released to ALL bid holders
- Bids submission must include acknowledgement of addendums



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Electronic Bidding

E-Bidding, Revisited

- Section 10-20.21 of the School Code: authorizes electronic process for communicating, accepting, and opening competitive bids.
 - Bidding process must include safeguards:
 - At the time of bid opening, the administrator conducting the bid opening must login to a specified database using a unique name and password previously assigned to each bidder to allow access to the bidder's specific bid project number.
 - The specified electronic database must be on a network that (i) is in a secure environment behind a firewall; (ii) has specific encryption tools; (iii) maintains specific intrusion detection systems; (iv) has redundant systems architecture with data storage back-up, whether by compact disc or tape; and (v) maintains a disaster recovery plan.



E-Bidding Practices

- Follows legal public bid requirements
- Fair, open and free of competitive advantages – No Change!!!
 - Impartial Specification
 - Evaluation and Selection Criteria Shared with All Bidders – If necessary
 - Reasonable timeframes for bidders to respond
 - Questions, Answers and Addendums available to everyone
- Receiving Bids
 - Receiving bids sealed and secure
 - Bidders have their own log in and secure way to submit a sealed bid
 - Audit trail for entire process
- Opening Bids
 - Notification to everyone of method
 - Information and details available for easy access
 - Do not have restrictions for public to gain access to electronic bid opening
 - Record bid opening and make available



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Rejecting the bid

- Discretion “to reject any and all bids.”
- Documenting the Basis for Awarding/Rejecting Bid
- Constitutionally Impermissible Basis for Rejecting Bids
- Bid Mistakes



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New or Updated Legislation

- Transportation Contracts
 - Contracts providing for the transportation of pupils, which contracts must be advertised in the same manner as competitive bids and awarded by first considering the bidder or bidders most able to provide safety and comfort for the pupils, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price. However, at no time shall a cause of action lie against a school board for awarding a pupil transportation contract per the standards set forth in this subsection (a) unless the cause of action is based on fraudulent conduct.



New or Updated Legislation

- Transportation Contracts

- (105 ILCS 5/29-6.1) (from Ch. 122, par. 29-6.1)

(Text of Section before amendment by P.A. 103-430)

Sec. 29-6.1. Contracts for transportation. Subject to Section 6-106.11 of the Illinois Vehicle Code, school boards may enter into contracts for up to 3 years for transportation of pupils to and from school. Such contracts may be extended for up to 2 additional years by mutual agreement of the parties, and thereafter may be extended on a year-to-year basis by mutual agreement of the parties, however no such contract may be extended on a year-to-year basis if a school board receives a timely request from another interested contractor that a contract be let by bid.

(Source: P.A. 84-768.)



New or Updated Legislation

- Transportation Contracts

- (Text of Section after amendment by P.A. 103-430)

Sec. 29-6.1. Contracts for transportation. Subject to Section 6-106.11 of the Illinois Vehicle Code, school boards may enter into contracts for any period of time deemed appropriate by those school boards for transportation of pupils to and from school; however, no contract, inclusive of any proposed renewals, may exceed 10 years. All contracts for a period of time greater than 5 years that do not include the use of electric vehicles for pupil transportation shall include a termination option after 5 years. Nothing in this Section prohibits contract opener clauses for any purpose from being included in the contract. A contract for pupil transportation that utilizes a significant percentage of electric vehicles may be entered into by a school board for up to 15 years if the contract relies on capital or infrastructure purchases or improvements that cannot reasonably be justified in a shorter-term contract.

(Source: P.A. 103-430, eff. 1-1-24.)



New or Updated Legislation

- Food Service Contracts

- Contracts for goods, services, or management in the operation of a school's food service, including a school that participates in any of the United States Department of Agriculture's child nutrition programs if a good faith effort is made on behalf of the school district to give preference to:
 - (1) contracts that procure food that promotes the health and well-being of students, in compliance with United States Department of Agriculture nutrition standards for school meals. Contracts should also promote the production of scratch made, minimally processed foods;
 - (2) contracts that give a preference to State or regional suppliers that source local food products;
 - (3) contracts that give a preference to food suppliers that utilize producers that adopt hormone and pest management practices recommended by the United States Department of Agriculture;
 - (4) contracts that give a preference to food suppliers that value animal welfare; and
 - (5) contracts that increase opportunities for businesses owned and operated by minorities, women, or persons with disabilities.



Questions and Answers

We thank you for your time!



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Presenters:

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