



# SECTION VI

# CONTRACTS

## **A. MAINTENANCE CONTRACTS**

Select equipment and systems may be covered by maintenance contracts in order to assure continued efficient operation and maintain warranties. In evaluating the equipment to be covered, consideration should be given to:

1. The total cost to replace the item
2. Whether the item is under an existing warranty
3. The likelihood of breakdown and whether it would be more cost effective to pay for time and material repair
4. The urgency of repair — response for time and materials calls is generally longer than the response time when a service contract has been purchased, but may be offset by quantity on location and/or vendor reputation.

Some ways to save money when bidding maintenance agreements include:

1. Bidding for annual and multi-year contracts. On equipment where maintenance is available from only one source, the Illinois School Code allows an exception to the necessity to bid maintenance provided the contract is with the manufacturer or authorized service agent where service can be best performed by the manufacturer or service agent.
2. Negotiating multi-year contracts on an annually renewable basis
3. When purchasing new equipment, include an extended maintenance agreement in the original bid.

## **B. GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS**

To ensure that all bidders thoroughly understand the expectations of the institution general conditions must be incorporated into bid documents for construction, repair and installation projects. After acceptance of a bid, a contract can be issued confirming that the Board of Education accepted the vendor's bid. The contract should indicate the date of acceptance, the documents included, performance expectations, and the dollar amount of the contract and completion dates.

The institution may include the contract as a part of the bid documents. The contact may then reference the bid documents.

Some concepts that at a minimum should be included are as follows:

### ***1. Bid Security***

Although bid security is not statutorily required, it is recommended that a bid bond be included with the bid. The bid bond assures the institution that the contractor is bondable. Bid bonds are typically required in an amount equal to 10% of the contract value and are made payable to the institution.

A certified or cashier's check may be provided instead of a bid bond. However, caution should be used as certified or cashier's checks do not guarantee the ability of the contractor to secure performance and payment bonds.

All bid securities, except that of the successful bidder, should be returned immediately after award of the contract.

### ***2. Performance and Labor and Material Payment Bonds***

State of Illinois law requires the successful bidder to furnish a one hundred percent (100%) Performance Bond and Labor and Material Payment Bond. Bonds must guarantee the completion of the contract and payment to all suppliers.

Contracts valued at \$100,000 or less may use a letter of credit in lieu of Performance and Labor and Material Payment Bonds.

### ***3. Insurance and Indemnification***

The successful bidder shall expressly bind itself to defend and hold the institution harmless from all suits or actions of every name and description. Successful bidders shall carry insurance, in a company or companies acceptable to the institution, for Worker's Compensation and Comprehensive General Liability. The limits of General Liability Insurance shall be established by the institutions' insurance consultant.

Each bidder shall submit, prior to award, a current certificate of insurance and policy endorsement to meet the specifications. The School District is to be named as additional insured. No work shall begin until certificates of insurance are provided to the institution.

Contracts must contain an indemnification provision requiring the contractor or vendor to indemnify and hold the district harmless against any liabilities the district might incur as a result of the contractor's or vendor's negligence or breaches of the contract.

#### **4. Site Cleanup**

The contractor shall, daily, and at the completion of the work, at each site and/or location, remove and legally dispose of all rubbish, surplus materials, equipment, etc., and shall leave the site and/or locations absolutely clean and in good order to the satisfaction of the purchasing official.

#### **5. Safety**

The contractor is responsible for the safe passage of pedestrian traffic for the duration of the job. Any precautionary measures, warning signs, etc., required to assist the contractor in the performance of the work shall be at contractor's expense and included in the quoted price. The contractor must be solely and exclusively responsible for site safety.

#### **6. Examination of Site and Documents**

Prior to submitting a bid, each bidder shall visit the site and will be responsible for knowledge of the conditions affecting the work. The act of submitting a bid shall be considered full acknowledgment that the bidder has inspected the site, as well as the contract documents, and is familiar with the conditions, measurements and requirements.

#### **7. Assignment of Subcontracting**

Each bidder shall affirm that no Board of Education member, officer or employee of the institution or their immediate family members, is interested financially in the proposed contract.

#### **8. Liens**

No payment shall become due until the contractor delivers a complete release of all liens arising out of the contract. Final lien waivers should be included with the final payment request. If any lien remains unsatisfied after all payments are made, the contractor shall reimburse to the institution all monies that the institution may be compelled to pay in discharging such a lien, including related costs and reasonable attorney's fees.

#### **9. Work Schedule and Completion**

Unless otherwise stated, the contractor shall commence work immediately upon receipt of a purchase order. Means, methods and technique of construction are the responsibility of the contractor, in compliance with bid specifications. Work shall be completed within the time stipulated, and penalties may be assessed for noncompliance if indicated in the contract terms.

#### **10. Protection of Work**

The contractor shall adequately protect the work, adjacent property, and the public. The contractor shall be responsible for any damage or injury due to their negligence. The

contractor shall be entirely responsible for all apparatus, equipment and appurtenances furnished in connection with the work. Special care shall be taken to protect all parts thereof in such a manner as may be necessary or directed.

### **11. Default**

In case of default by the contractor, the Board of Education may procure the materials or services from other sources and hold the contractor responsible for any and all excess costs.

### **12. Cancellation of Contract**

In case of bankruptcy of the contractor, failure of the contractor to pay suppliers, workers, work stoppage or a failure by the contractor to provide sufficient workers for the job or sufficient material for the job, the Board of Education may terminate the contract and take over the completion of the project, applying the unpaid balance of money for the contract to the completion of the work and any extra expenses.

### **13. Wage Rates**

The general prevailing rate of wages in the locality in which the work is to be performed for each craft or type of worker or mechanic needed to execute the contract will adhere to all Federal Laws and Laws of the State, and to local ordinances and regulations applicable to the work and having the force of law. Effective January 1, 2010, school districts awarding contracts are to provide the contractor with written notice stating whether the project is subject to the Prevailing Wage Act.

### **14. If the Prevailing Wage Act is applicable, the contractor must prepare, furnish the School District, and maintain certified payroll in accordance with Section 5 of the Act, 820 ILCS 130/5. OSHA**

In the event that the contractor comes on the premises of the institution, the contractor is responsible for conducting all activities on said premises in accordance with the provisions of the Occupational Safety and Health Act of 1970 and the standards and regulations issued hereunder. The contractor shall agree to indemnify and hold harmless the institution for all claims and damages resulting from contractor's failure to conduct their activities on the premises in accordance with said Act and the related standards.

### **15. Conditions for Payment**

Progress payments will be made, if requested, upon approval of the project architect (when applicable) and the purchasing official, if such payments are warranted. Payments shall be made on the following basis:

**a) First Payment** - for cost of materials delivered to job site, less 10% retainage.

**b) Progress Payment** - for work completed to date, less 10% retainage.

**c) Final Payment** - 10% retainage upon satisfactory completion of punch list.

## **16. *Lein Waivers***

Supporting partial Waivers of Lien for each subcontractor, supplier and general contractor must accompany each request for progress payment.

Waivers must spell out the exact description of work performed for which the waiver is issued and state either dollar amount received or amount of work less retainage held by the general contractor.

For final payment it is necessary to submit final waivers in the full amount of the contracts for all subcontractors, suppliers and the general contractor.

Waivers must be accompanied by a sworn statement listing subcontractors and suppliers, the amounts of their contracts and the amounts requested.

## **C. INSTALLATION CONTRACTS**

When purchasing new equipment, it may be advantageous to obtain field installation services from the manufacturer. Such contracts may be performed by the manufacturer or by subcontractors engaged by the manufacturer. In addition to the installation of new equipment, it may be necessary to move existing equipment to a different location. In such cases, contractors can be engaged to perform work beyond the owner's capabilities.

Such contracts must clearly define all details of foundations, utilities, equipment specifications, sizes and weights, storage of tools and supplies, site conditions, etc.