

# Mastering the Complex World of Public Bidding

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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 **\$35,000 (Effective 1/1/24) or a lower amount as required by board policy** to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality, and serviceability...

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# The Duty to Publicly Bid

- 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;
  - 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**;



# The Duty to Publicly Bid

- Except the following:
  - 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;
  - 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.

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# The Duty to Publicly Bid

- 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;
  - Contacts 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;
  - Where funds are expended in an emergency and such emergency expenditure is approved by  $\frac{3}{4}$  of the members of the Board (6 yes votes);
  - State master contracts authorized under Article 28A of the School Code.

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# The Bidding Process



# The Bidding Process

- Bid Specifications
  - Certainty Required
  - Sole Sourcing
  - Bid Addendum & Questions
  - Pre-Bid Meeting

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# The Bidding Process

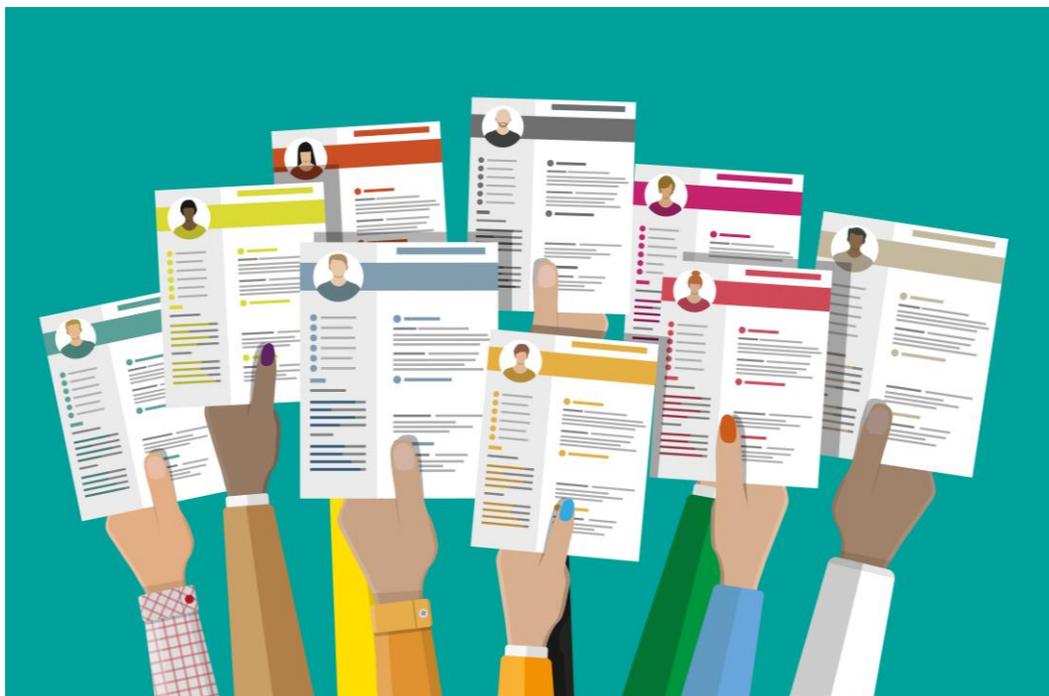
- Bid Submittals
  - Sealed Bids
  - Electronic Bids
  - Timeliness of Bids
  - Modification, Withdrawal or Re-submittal of Bids Before Bid Opening
- Public Opening and Reading of the Bids
  - Withdrawal or Modification after the Bids Are Received

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# The Bidding Process



## Awarding the Bid – Criteria

- Lowest
  - Alternate Bids
- Responsive
  - Material Defects – Nonwaivable
  - Minor Variances – Waivable
- Responsible
  - Pre-qualification of Bidders
- Post-Bid Pre-Award Negotiations

# The Bidding Process

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



# The Bidding Process

- Bid Mistakes - Circumstances Warranting Judicial Relief from a Bid Mistake
  - Material Feature of the Contract
  - Neglect in the Preparation of the Bid
  - Maintaining the *Status Quo*
  - The Owner's Knowledge of the Mistake
  - Unconscionability

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# Unique Bidding Procedures and Exemptions



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# 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.

# 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.

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# Professional Services

- RFQ process required to select **Architects, Engineers & Land Surveyors** under **Local Government Professional Services Selection Act - 50 ILCS 510/0.01**.
  - RFQ can be solicited by posting notice on website, publication or sending notice to firms who have a current statement of qualifications with the public body.
  - RFQ not required if the public body has a previous satisfactory relationship with the firm.
  - Board can waive the RFQ process for contracts less than \$40,000+ based on CUP index.
  - Emergency situations.



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# Guaranteed Energy Savings Contracts

- An RFP process is required for school districts to enter into **Guaranteed Energy Savings Contracts**
  - An RFP must be submitted to the administrators of the Capital Development Board Procurement Bulletin for publication.
  - A public notice must be published in a newspaper 30 days before the date proposals are due.
  - *Sealed* proposals must be evaluated based on an analysis of:
    - Costs of installation, modification or remodeling
    - An analysis of whether either the energy consumed or operating costs, or both, will be reduced as a result of the proposed conservation measures
  - The Contract must be awarded at a public meeting with at least 10 days notice.
  - Award of guaranteed energy savings contract must include a written guarantee that energy or operational cost savings will be met within 20 years.

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# New Design-Build Legislation “How-To”

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# Design-Build – “Selection”

## Phase One

(105 ILCS 5/15A-20 new)

Sec. 15A-20. Development of scope and performance criteria.

(a) **The school district must develop, with the assistance of a licensed design professional or public art designer,**

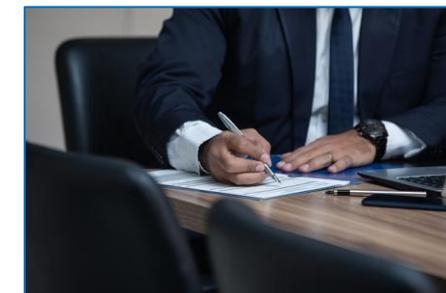
a request for proposal, which must include scope and performance criteria. The scope and performance criteria must be in sufficient detail and contain adequate information to reasonably apprise the qualified design-build entities of the school district's overall programmatic needs and goals, including criteria, general budget parameters, schedule, and delivery requirements.



Legal Hoops



Attorney Writes



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# Design-Build – “Selection”



## Phase Two

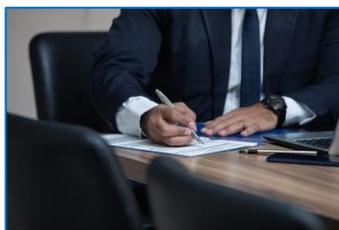


(105 ILCS 5/15A-25 new)

Sec. 15A-25. Procedures for selection.

(a) The school district must use a 2-phase procedure for the selection of the successful design-build entity. Phase I of the procedure must evaluate and shortlist the design-build entities based on qualifications, and **Phase II must evaluate the technical and cost proposals.**

## Attorney Writes



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# Is Design-Build Right for You?

- District Experience With Design And Construction
- District Architect/Artist Available To Set Program
- Willing To Be “Hands Off” In The Process
- BOE Willing To Accept The Associated Risks
- Funds Available With Reserve



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# Governmental Cooperative Purchasing

- At least two statutes authorize **Governmental Cooperative Purchasing**
  - Joint Purchasing Act (30 ILCS 525/1)
  - Article 28A of the School Code (105 ILCS 5/28A)
- The Joint Purchasing Act is a stand-alone statute that supersedes any other individual bidding requirements. 30 ILCS 525/2(a).
  - The cooperative must be run by a government body.
  - The school district must join the cooperative by a board approved agreement.
  - Bids and proposals must be based on competitive solicitations.
  - Bids and proposals must be solicited by public notice as specified by the Joint Purchasing Act.

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# Governmental Cooperative Purchasing

- What selection criteria can a cooperative use?
- All purchases, orders or contracts shall be awarded to the lowest responsible bidder or **highest-ranked proposer (by Coop or your School District, taking into consideration:**
  - The **qualities** of the articles or services supplied;
  - Their **conformity** with the specifications;
  - Their **suitability** to the requirements of the participating governmental units; and
  - The **delivery** terms.

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# Governmental Cooperative Purchasing

- What are some strategies for success with Cooperative Purchasing options?
- Make sure you leave yourself enough time.
- Obtain informal quotes or estimates from local vendors/contractors first. It may be cheaper to use the traditional bidding method.
- Look at the offerings of all of the cooperatives before deciding to select one particular cooperative.

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# Food Service Contracts

- The School Breakfast and Lunch Program Act (105 ILCS 125/.05 et seq.) requires that all school districts have a free lunch program for eligible students, either through participation in the National School Lunch Program or by providing such lunches independently.
  - Participation in the National School Lunch Program (NSLP) requires schools districts to comply with ISBE procurement procedures.
    - Food Service Management Company
    - Vended Meals by FSMCs
    - Vended Meals
  - School districts not participating in the NSLP must comply with its own bidding requirements.

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# TO BID OR NOT TO BID

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# To Bid Or Not To Bid

- The following are a list of various types of contracts. For each example, the question is “to bid or not to bid?”
- In other words, are these contracts required to be publicly bid pursuant to Section 10-20.21 of the School Code?

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# To Bid Or Not To Bid

A contract for the purchase of paper goods and supplies totaling \$24,000?



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# To Bid Or Not To Bid

A service contract totaling \$50,000 for the following individuals:

- a. A CPA retained to audit the district's financial records?
- b. A local artist retained to paint a mural in the district cafeteria?
- c. A local painter hired to paint all the district's lockers?

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.

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# To Bid Or Not To Bid

A \$60,000 annual contract for milk?

Contracts for the purchase of perishable foods and beverages.

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# To Bid Or Not To Bid

During a large construction project, a change order totaling \$75,000?

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.



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# To Bid Or Not To Bid

A \$150,000 annual maintenance contract for the district's HVAC system?

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.

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# To Bid Or Not To Bid

A \$300,000 contract for the installation of a district-wide security system?

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.

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# To Bid Or Not To Bid Not



A \$300,000 contract for the purchase of copying machines for the district office and resource centers?

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# To Bid Or Not To Bid

A \$500,000 contract for the purchase and installation of “smart” boards in all district classrooms?



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# To Bid Or Not To Bid

A three-year contract for the purchase of electricity totaling over \$100,000 per year?



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## To Bid Or Not To Bid

A contract for \$500,000 to purchase a used mobile classroom?

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# To Bid Or Not To Bid

A \$48,000 contract for the renovation of the stage in the district auditorium?



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# To Bid Or Not To Bid



A \$75,000 contract for repair work to the roof which was severely damaged during a recent storm?

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# To Bid Or Not To Bid

A contract for both regular and special education transportation services?



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# Questions and Answers

*We thank you for your time!*

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