

PUBLIC PROCUREMENT FOR CONSTRUCTION PROJECTS



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Agenda

- Purpose and Introductions
- Overview of Rules
- Public Bidding
- Negotiation and Award
- Additional Approvals
- Change Order limitations
- Prevailing Wage and Project Labor Agreements
- Q&A

Purpose

- Provide an overview of rules that apply to project delivery, bidding and award of Public Sector construction projects.
 - Will not cover Joint Ventures, Public-Private or special ownership arrangements

If using public resources, the rules still apply

- Public Sector- any clients that are affiliated with the government or use public funds.
- Not intended to take the place of attorneys and contracting officers.

Introductions

Overview of Rules

Comply with the most stringent that is applicable

Compiled Statutes

GOVERNMENT

- [CHAPTER 5 GENERAL PROVISIONS](#)
- [CHAPTER 10 ELECTIONS](#)
- [CHAPTER 15 EXECUTIVE OFFICERS](#)
- [CHAPTER 20 EXECUTIVE BRANCH](#)
- [CHAPTER 25 LEGISLATURE](#)
- [CHAPTER 30 FINANCE](#)
- [CHAPTER 35 REVENUE](#)
- [CHAPTER 40 PENSIONS](#)
- [CHAPTER 45 INTERSTATE COMPACTS](#)
- [CHAPTER 50 LOCAL GOVERNMENT](#)
- [CHAPTER 55 COUNTIES](#)
- [CHAPTER 60 TOWNSHIPS](#)
- [CHAPTER 65 MUNICIPALITIES](#)
- [CHAPTER 70 SPECIAL DISTRICTS](#)
- [CHAPTER 75 LIBRARIES](#)

EDUCATION

- [CHAPTER 105 SCHOOLS](#)
- [CHAPTER 110 HIGHER EDUCATION](#)
- [CHAPTER 115 EDUCATIONAL LABOR RELATIONS](#)

Board Policy

02. Construction Contracts in Excess of \$50,000

After due advertisement, all competitive bids for construction contracts involving an expenditure expected to exceed \$50,000 must be sealed by the bidder and must be publicly opened by the Vice President for Administrative Affairs or designee and one other staff member. At this time, the contents of the bids must be publicly announced.

02.1 Construction contracts between \$5,000 and \$50,000

Three written quotations must be secured when possible from responsible contractors on construction contracts ranging in cost from \$5,000 to \$50,000.

The Vice President for Administrative Affairs or designee has authorization to make an award in the best interest of the college, providing the project has been budgeted. For informational purposes, a summary report of construction contract awards will be provided to the Board of Trustees on a monthly basis for construction contracts made in the amount of \$5,000 to \$50,000.

02.2 Bonding requirements and insurance

All competitively bid construction contracts in excess of \$50,000 shall require bidders to provide a ten percent bid bond, cashier's check, or money order made payable to the College of Lake County, to secure their bid until the award process is complete. Upon award, bid bonds shall expire, and checks will be returned to respective bidders. All construction contracts in excess of \$50,000 shall require successful bidders to submit and maintain for the duration of the contract performance, and material and labor payment bonds for 100% of the total contract amount.

The college shall require all contractors working on college property to provide the college with a certificate of liability insurance naming the college as additional insured.

- Board Limitations may vary from statutes
- Board may have goals for local and DBE participation

<http://www.ilga.gov/legislation/ilcs/ilcs.a>



Overview of Rules

Federal Acquisition Regulation

14.101 Elements of sealed bidding.

Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. The following steps are involved:

(a) Preparation of invitations for bids. Invitations must describe the requirements of the Government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.

(b) Publicizing the invitation for bids. Invitations must be publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing must occur a sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.

(c) Submission of bids. Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.

(d) Evaluation of bids. Bids shall be evaluated without discussions.

(e) Contract award. After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation.

<https://www.acquisition.gov/browsefar>

- Limitations vary by agency
- Set-aside programs
- Prospectus-level projects

Overview of Rules

PUBLIC ENTITY	STATUTE	PUBLIC BIDDING THRESHOLD	NOTES AND EXCEPTIONS
School Districts	105 ILCS 5/10-20.21	\$25,000 unless lower amount required by Board Policy Construction not to exceed \$50,000 and not involving a change or increase in the size, type or extent of an existing facility	Services of individuals possessing a high degree of professional skill (Professional Services) Other contracts (varies) printing, perishable goods, emergency expenditures with ¾ Board approval
Community College Districts	110 ILCS 805/3-27.1		
Park Districts	70 ILCS 1205/8-1(c)	\$20,000	Authorization of 2/3 aldermen or trustees; contracts with Fed govt
Library Districts	75 ILCS 5/5-5	\$20,000	
Counties	55 ILCS 5/5- 1022	\$30,000 for counties with fewer than 2,000,000	
Municipalities (less than 500,000 inhabitants)	65 ILCS 5/8-9	\$20,000 (public improvements and their maintenance)	
PBC	50 ILCS 20/ (1955) PBC Chicago 1956.	Lowest responsible bidder in open competitive bidding. Must be advertised at least 3 weeks, every day. Consider D/B if over \$25,000; M/WBE goals; local hire	Must make case for d/b on project-by-project basis. \$12,000,000+ require minimum of 28 day bid cycle.
CPS		\$10,000 for biddable goods, \$25,000 for non-biddable. No more than \$25,000 combined, then must be bid.	PLA, M/WBE requirements, EEO, Local hires
CDB	20 ILCS 3105/ CDB Act	Manages construction projects for the State of Illinois; advertised sealed public bidding	May require Multi-prime contracts; Design-Build on case-by-case basis.
Federal Government	FAR- Part 36	Sealed bids typically required, Contracting Officer determination based on GCE, time available, Government set-aside programs 8(a), likelihood of competition.	

Overview of Rules- Other funding sources

Grant Funding- may have specific requirements

- Buy American
- Pre-qualified products
- DBE Participation
- Reporting, records retention and disposal requirements

Private donor

- What governs procurement? Only the Board Policy?

Overview of Rules- Other contracts

Professional Services

- Sealed bids not required
- Depend on a high degree of professional skill
- Qualification-Based Selection (QBS)

Guaranteed Energy Savings Contract (110 ILCS 805/5A-15)

- Payments made over time guaranteed to pay the costs of the energy conservation measures.
- Negotiated Procurement
- Evaluation of the proposal shall be done by a registered professional engineer or architect.

Overview of Rules- Other contracts

CM Contracts

- CM at Risk or Agency
- Negotiated Procurement
- Released for public bidding in packages
- Limitations on self-performance

Other Restrictions

- Participation of Board Members
- Disposal of property

Public Bidding

Sealed Bid- Most typical public procurement for construction contracts in excess of \$50,000 (Community College example):

- Public Notice at least 10 days' prior to Bid Opening
- Addenda cannot be issued less than three days prior to bid opening unless due date is extended
- No electronic bids
- Bid bond required
- Prevailing Wage and/ or Project Labor Agreements (PLA's)
- Sealed bid prior to due date and time, no exceptions.

Public Bidding (cont'd)

- Contractor may withdraw unopened bid prior to bid opening and may resubmit if delivered on time.
- Public Bid opening- bids read aloud
- Contractor must acknowledge all addenda
- Must be filled out completely notarized as required

Smaller Projects- Still must comply with Statutes and Board Policy

- Typically written proposals required for projects in excess of \$5,000

Negotiation and Award

Bid Evaluation- Basis of Award:

- Lowest- based on Base Bid and/ or accepted Alternates?
 - Priority of Alternates in the Bid Documents?
 - If not, what if Base Bid indicates one contractor but combination of Base+Alternates indicates a different contractor?
- Responsive
 - Bid filled out completely with forms, affidavits and signatures
- Responsible
 - References and prior projects indicate sufficient experience
 - Scope review indicates project understanding

Negotiation and Award

Rejection or Withdrawal of Bid

- Bidders must honor their bids for specified duration
- Bids may be rejected if not responsive or Contractor deemed not responsible
- Owner typically retains the right to reject any or all bids
- Bidders may formally request to withdraw bids
 - Error is discovered, must be documented
 - Owner may take the bid bond
 - Other remedies such as cost to re-bid

Negotiation after Bidding, prior to award

- May ask Bidder to review a specific item if not consistent with the field, such as an Alternate or Unit Price
- Can only go down, never up
- Cannot change which contractor is awarded
- Cannot make a change in scope to bring project into budget
 - Can only negotiate price- with the low bidder
 - Example- cannot direct low bidder to remove a trade- “We’ll do it in-house”; next lowest bidder can cry foul.
 - Must rebid whole job if scope change is needed

Award

Award recommended to Board

- Contingency included with Board approval?
 - May be within contract or Board-approved limit
 - This may impact Change Order approval throughout project

Contract

- Even if developed by template, should be reviewed by Owner's attorney prior to execution

Additional Approvals

Permitting

- May be exempt from a Building Permit- either through a separate AHJ or Intergovernmental Agreement (IGA).
 - Example- Caution, OCC has an IGA with Des Plaines, not Skokie; CLC has an IGA with Grayslake, not Vernon Hills or Waukegan
- Still need to comply with Zoning Ordinances
 - Example- K-12 Schools obtain Building Permits from the Regional Office of Education; Crystal Lake bleachers
 - Example- Oakton did not need a permit for Monument signs, but did need a variance from Des Plaines (even with the IGA)

Additional Approvals (cont'd)

- Still need other permits and approvals Fire sprinklers, MWRD, Army Corps of Engineers, Health Department
- May still require plan review by local Fire Department or Property Insurance Carrier.
 - Insurance carrier may have strict requirements for fire suppression, fire alarms and roofing that surpass IBC, NEC and NFPA
 - Example- FM Global requirements for sprinklers
- Still require Health and Fire Inspections during construction and for Certificate of Occupancy

Change Order Limits

- Limited by Statute
 - Typically not in excess of 10% of contract price
 - Confirm applicable statute and Board Policy
 - A large change order credit may not conflict with the Statutes, but could raise questions if it appears there was a change in scope.
 - All construction records are subject to FOIA
- Deferred Acceptance of Alternates
 - Example- bidders were required to include an alternate and hold the price for acceptance at a later specified date. What if that alternate exceeds the Change Order limitation?

Prevailing Wage Requirements

- Typically required for Public Sector construction projects- **no matter what size**
- Davis Bacon Act
- Certified Payroll Statements need to be included with Pay Applications- current, not trailing
- <https://www.illinois.gov/idol/Pages/default.aspx>
 - Landscaping and Moving contracts
 - Work not associated with construction
 - Equipment Maintenance- still require compliance

Project Labor Agreements

- Any contractor can bid on public projects
 - Does not need to be a Union contractor
- Client may opt to execute a Project Labor Agreement so any contractor bidding the job needs to be a signatory with Local
- Protection in the event of a strike
 - Project by project- what if there are multiple projects going on at the same location?
 - CM Delivery bid packages

QUESTIONS?