

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

August 2, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: Business and Non-Instructional Operations-4:60

A member wished to bring up this policy for discussion. I have attached the current policy and also the school code language for the policy. I have also attached a copy of the School Law Survey from 2008 in which it is easier to read what the School Code language means. That way, you can see easily what is and is not covered under bidding. I crossed off the old amounts and wrote in the new dollar amounts that were updated from the last version. I am still waiting for my new copy of the School Law Survey.

Business and Non-Instructional Operations

Purchases and Contracts

The Superintendent shall manage the District's purchases and contracts in accordance with State law, the standards set forth in this policy, and other applicable Board of Education policies.

Standards for Purchasing and Contracting

The Superintendent shall develop procedures that will allow the purchase of good quality products and services at the lowest cost, with consideration for service, quality, and delivery promptness, and in compliance with State law.

Adoption of the annual budget authorizes the Superintendent or a designee to purchase budgeted supplies, equipment, and services, provided that State law is followed. Purchases of items not included in the budget require prior Board of Education approval, except in an emergency. (No purchase or contract shall be made or entered into as a result of favoritism, extravagance, fraud, or corruption.)

When presenting a contract or purchase for Board approval, the Superintendent or designee shall ensure that it complies with applicable State law, including but not limited to, those specified below:

1. Supplies, materials, or work involving an expenditure in excess of \$25,000 must comply with the State law bidding procedure, 105 ILCS 5/10-20.21, unless specifically exempted.
2. Guaranteed energy savings must comply with 105 ILCS 5/ 19b-1 et Seq.
3. Third party non-instructional services must comply with 105 ILCS 5/10-22.34c.
4. Goods and services that are intended to generate revenue and other remunerations for the District in excess of \$1,000, including without limitation vending machine contracts, sports and other attire, class rings, and photographic services, must comply with 105 ILCS 5/10-20.21. The Superintendent or designee shall keep a record of: (1) each vendor, product, or service provided, (2) the actual net revenue and non-monetary remuneration from each contract or agreement, and (3) how the revenue was used and to whom the non-monetary remuneration was distributed. The Superintendent or designee shall report this information to the Board of Education by completing the necessary forms that must be attached to the District's annual budget.
5. The purchase of paper products must comply with 105 ILCS 5/10-29.19c and Board policy 4:70, Energy Conservation.

The Superintendent or designee shall manage the execution of District contracts, including: (1) complying with requirements concerning listing certain expenditures in the Annual Statement of Affairs, (2) listing on the District's website all contracts in excess of \$25,000 and any contracts with an exclusive bargaining representative, and (3) monitoring the discharge of contracts, contractors' performances, and the quality and value of services or products being provided.

Adopted: August 3, 2009

a claim arises. No agent may be afforded indemnification or protection unless he was a member of a school board, an employee of a board, an authorized volunteer, a mentor of certified staff, or a student teacher at the time of the incident from which the claim arises.

(Source: P.A. 79-210; 96-62, § 5.)

Effect of Amendments.

The 2009 amendment by P.A. 96-62, effective July 23, 2009, in the first sentence, inserted "mentors of certified staff as authorized in Article 21A and Sections 2-3.53a, 2-3.53b, and 34-18.33 of this Code" and added "or related to any mentoring services provided to certified staff of the school district"; in the second and third sentences inserted "mentors of certified staff"; and made related changes.

105 ILCS 5/10-20.21 Contracts

Sec. 10-20.21. *Contracts.* (a) To award all contracts for purchase of supplies, materials or work or contracts with private carriers for transportation of pupils involving an expenditure 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, after due advertisement, except the following: (i) contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part; (ii) contracts for the printing of finance committee reports and departmental reports; (iii) contracts for the printing or engraving of bonds, tax warrants and other evidences of indebtedness; (iv) contracts for the purchase of perishable foods and perishable beverages; (v) 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; (vi) contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with the 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; (vii) 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; (viii) contracts for duplicating machines and supplies; (ix) contracts for the purchase of natural gas when the cost is less than that offered by a public utility; (x) purchases of equipment previously owned by some entity other than the district itself; (xi) 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; (xii) contracts for goods or services procured from another governmental agency; (xiii) contracts

for goods or services which are economically procurable from only one source, such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone or telegraph; (xiv) where funds are expended in an emergency and such emergency expenditure is approved by $\frac{3}{4}$ of the members of the board; (xv) State master contracts authorized under Article 28A of this Code [105 ILCS 5/28A-5 et seq.]; and (xvi) contracts providing for the transportation of pupils with special needs or disabilities, 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 with special needs or disabilities, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price.

All competitive bids for contracts involving an expenditure in excess of \$25,000 or a lower amount as required by board policy must be sealed by the bidder and must be opened by a member or employee of the school board at a public bid opening at which the contents of the bids must be announced. Each bidder must receive at least 3 days' notice of the time and place of the bid opening. For purposes of this Section due advertisement includes, but is not limited to, at least one public notice at least 10 days before the bid date in a newspaper published in the district, or if no newspaper is published in the district, in a newspaper of general circulation in the area of the district. State master contracts and certified education purchasing contracts, as defined in Article 28A of this Code [105 ILCS 5/28A-5 et seq.], are not subject to the requirements of this paragraph.

Under this Section, the acceptance of bids sealed by a bidder and the opening of these bids at a public bid opening may be permitted by an electronic process for communicating, accepting, and opening competitive bids. However, bids for construction purposes are prohibited from being communicated, accepted, or opened electronically. An electronic bidding process must provide for, but is not limited to, the following safeguards:

(1) On the date and time certain of a bid opening, the primary person conducting the competitive, sealed, electronic bid process shall log onto a specified database using a unique username and password previously assigned to the bidder to allow access to the bidder's specific bid project number.

(2) 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.

It is the legislative intent of this amendatory Act of the 96th General Assembly to maintain the integrity of the sealed bidding process provided for in this

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Section, to further limit any possibility of bid-rigging, to reduce administrative costs to school districts, and to effect efficiencies in communications with bidders.

(b) To require, as a condition of any contract for goods and services, that persons bidding for and awarded a contract and all affiliates of the person collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act [35 ILCS 105/1 et seq.] regardless of whether the person or affiliate is a "retailer maintaining a place of business within this State" as defined in Section 2 of the Use Tax Act [35 ILCS 105/2]. For purposes of this Section, the term "affiliate" means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. For purposes of this subsection (b), an entity controls another entity if it owns, directly or individually, more than 10% of the voting securities of that entity. As used in this subsection (b), the term "voting security" means a security that (1) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (2) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

To require that bids and contracts include a certification by the bidder or contractor that the bidder or contractor is not barred from bidding for or entering into a contract under this Section and that the bidder or contractor acknowledges that the school board may declare the contract void if the certification completed pursuant to this subsection (b) is false.

(b-5) To require all contracts and agreements that pertain to goods and services and that are intended to generate additional revenue and other remunerations for the school district in excess of \$1,000, including without limitation vending machine contracts, sports and other attire, class rings, and photographic services, to be approved by the school board. The school board shall file as an attachment to its annual budget a report, in a form as determined by the State Board of Education, indicating for the prior year the name of the vendor, the product or service provided, and the actual net revenue and non-monetary remuneration from each of the contracts or agreements. In addition, the report shall indicate for what purpose the revenue was used and how and to whom the non-monetary remuneration was distributed.

(c) If the State education purchasing entity creates a master contract as defined in Article 28A of this Code [105 ILCS 5/28A-5 et seq.], then the State education purchasing entity shall notify school districts of the existence of the master contract.

(d) In purchasing supplies, materials, equipment, or services that are not subject to subsection (c) of

this Section, before a school district solicits bids or awards a contract, the district may review and consider as a bid under subsection (a) of this Section certified education purchasing contracts that are already available through the State education purchasing entity.

(Source: P.A. 86-411; 87-414; 93-25, § 30-30; 93-1036, § 90; 94-714, § 5; 95-990, § 5; 96-392, § 5; 96-841, § 5.)

Effect of Amendments.

The 2003 amendment by P.A. 93-25, effective June 20, 2003, added the subsection (a) designation and subsection (b).

The 2004 amendment by P.A. 93-1036, effective September 14, 2004, rewrote the section to the extent that a detailed comparison would be impracticable.

The 2005 amendment by P.A. 94-714, effective July 1, 2006, added (b-5).

The 2008 amendment by P.A. 95-990, effective October 3, 2008, substituted "\$25,000 or a lower amount as required by board policy" for "\$10,000" twice, and substituted "\$50,000" for "\$20,000" in (a).

The 2009 amendment by P.A. 96-392, effective January 1, 2010, added item (xvi) at the end of the first paragraph of (a) and made a related change.

The 2009 amendment by P.A. 96-841, effective December 23, 2009, added the last two paragraphs of (a).

105 ILCS 5/10-20.21a Contracts for charter bus services

Sec. 10-20.21a. *Contracts for charter bus services.* To award contracts for providing charter bus services for the sole purpose of transporting students regularly enrolled in grade 12 or below to or from interscholastic athletic or interscholastic or school sponsored activities.

All contracts for providing charter bus services for the sole purpose of transporting students regularly enrolled in grade 12 or below to or from interscholastic athletic or interscholastic or school sponsored activities must contain clause (A) as set forth below, except that a contract with an out-of-state company may contain clause (B), as set forth below, or clause (A). The clause must be set forth in the body of the contract in typeface of at least 12 points and all upper case letters:

(A) "ALL OF THE CHARTER BUS DRIVERS WHO WILL BE PROVIDING SERVICES UNDER THIS CONTRACT HAVE, OR WILL HAVE BEFORE ANY SERVICES ARE PROVIDED:

(1) SUBMITTED THEIR FINGERPRINTS TO THE DEPARTMENT OF STATE POLICE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT OF STATE POLICE. THESE FINGERPRINTS SHALL BE CHECKED AGAINST THE FINGERPRINT RECORDS NOW AND HEREAFTER FILED IN THE DEPARTMENT OF STATE POLICE AND FEDERAL BUREAU OF INVESTIGATION CRIMINAL HISTORY RECORDS DATABASES. THE FINGERPRINT CHECK HAS RESULTED IN A DETERMINATION THAT THEY HAVE NOT BEEN CONVICTED OF COMMITTING ANY OF THE OFFENSES SET FORTH IN SUBDIVISION

25:220 When do bidding requirements apply?

A school board is required to let all contracts for supplies, materials, or work or contracts with private carriers for transportation of pupils involving an expenditure in excess of \$10,000 to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality and serviceability after due advertisement.

However, certain contracts are exempted from competitive bidding requirements, including:

- 1) contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part;
- 2) contracts for the printing of finance committee reports and departmental reports;
- 3) contracts for the printing or engraving of bonds, tax warrants, and other evidences of indebtedness;
- 4) contracts for the purchase of perishable food and perishable beverages;
- 5) 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 percent of the contract price;
- 6) contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with the 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;
- 7) 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;
- 8) contracts for duplicating machines and supplies;
- 9) contracts for the purchase of natural gas when the cost is less than that offered by a public utility;
- 10) purchases of equipment previously owned by some entity other than the district itself;
- 11) contracts for repair, maintenance, remodeling, renovation, or construction, or a single project involving an expenditure not to exceed \$20,000 and not involving a change or increase in the size,

type, or extent of an existing facility;

12) contracts for goods or services procured from another governmental agency;

13) contracts for goods or services which are economically procurable from only one source, such as for the purchase of magazines, books, periodicals, pamphlets, and reports and for utility services such as water, light, heat, telephone or telegraph;

14) where funds are expended in an emergency and such emergency expenditure is approved by three-fourths of the members of the board;

15) state master contracts authorized by section 28A of the School Code.

All competitive bids for contracts involving an expenditure in excess of \$10,000 must be sealed by the bidder and must be opened by a member or employee of the school board at a public bid opening at which the contents of the bids must be announced.

105 ILCS 5/10-20.21
105 ILCS 5/28A-5 et seq.

25:221 How much time must a school district allow for bidding?

To comply with competitive bidding statutes, each bidder must receive at least three days' notice of the time and place of bid opening. At least one public notice must be given in a newspaper published in the district at least 10 days before the bid date.

105 ILCS 5/10-20.21

25:222 May a school district accept a faxed or e-mailed bid?

No. The relevant statute provides that if bidding is required the bids must be sealed.

105 ILCS 5/10-20.21

25:224 Under what circumstances can a school district negotiate with more than one bidder after bids have been opened but before a contract has been let?

The desire to negotiate with more than one bidder usually occurs when the school district cannot clearly distinguish the low bid from bids received or seeks to avoid awarding a contract to the low bidder.

When a low bid cannot be distinguished, fault

School Law Survey
2008 edition - numbers not updated

\$25,000

\$25,000

\$50,000

can be found in the way the bid specifications were written. Negotiating with more than one bidder comes dangerously close under any circumstance to a violation of bidding statutes. The safest practice is to reject all bids, rewrite the bid specifications and rebid.

A school district seeking to avoid awarding a contract to the low bidder must find the bidder irresponsible within the meaning of the statute or award him the bid.

A school district may further negotiate price with the low bidder once the low bidder has been identified, but in doing so the school district must be very careful that no material element of the bid specification is changed and that the only matter being negotiated is the price.

105 ILCS 5/10-20.21

720 ILCS 5/33E-12

Acme Bus Corp. v. Board of Education of the Roosevelt Union Free School District, 89 N.Y. 2d 816, 681 N.E. 2d 1304, 659 N.Y.S. 2d 857 (1997)

25:226 Is the letting of insurance contracts subject to competitive bidding?

A school board is required to comply with the competitive bidding provisions of the School Code when awarding insurance contracts. The length of the contract and the facts surrounding its award will determine how soon after the original award the contract must be re-bid. Insurance contracts do not involve the type of professional skills that would exempt them from bidding requirements.

Self insurance plans and pools are not subject to bidding requirements.

Compass Health Care Plans v. Board of Education of the City of Chicago and Ted D. Kimbrough, 246 Ill. App. 3d 746, 617 N.E. 2d 6, 186 Ill. Dec. 767 (1st Dist. 1992)

25:228 Must a school board award contracts for architectural or engineering services to the lowest bidder?

No. Professional services are exempted from bidding requirements. When a school board needs architectural, engineering or land surveying services, the contract must be awarded on the basis of demonstrated competence and qualifications.

Unless it already has a satisfactory relationship with one or more firms, the school board must advertise for (a) statements of interest in a particular project and (b) statements of qualifications and performance data. The school board must evaluate firms submitting these statements and select

the top three based on qualifications, ability of professional personnel, past record and experience, performance data on file, willingness to meet time and budget requirements, location, workload and other applicable factors. The top three firms must be ranked in order of preference.

The school board must attempt to negotiate a satisfactory contract first with the top ranked firm and, if that fails, with the second and third firms, in the order ranked. Another list of three firms may be developed if the board is unable to negotiate a satisfactory contract with one of the first three firms.

50 ILCS 510/1 et seq.

105 ILCS 5/10-20.21

25:229 Must contracts to employ construction managers be bid?

The industry practice is to not bid construction manager contracts and to interview for services under the exception to the bidding statute for "individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part." It is not the title "construction manager" that allows avoidance of the bidding requirement, but rather the role the construction manager plays in the construction process.

The employment of a general contractor must be bid. The employment of a construction manager may or may not fall within the requirement to bid depending upon the facts regarding the duties to be performed by the construction manager in the contract documents. To meet the professional skill exception, the construction manager should not furnish equipment, building labor or materials and must serve as an advisor to the owner and have discretion in managing the project.

105 ILCS 5/10-20.21

Shively v. Belleville Township High School District No. 201 and Korte Construction Company, 329 Ill. App. 3d 1156, 769 N.E. 2d 1062, 264 Ill. Dec. 225 (5th Cir. 2002)

East Peoria Community High School District No. 309 v. Grand Stage Lighting Co., 235 Ill. App. 3d 756, 601 N.E. 2d 972, 976 Ill. Dec. 274 (3rd Dist. 1992)

25:230 What may a school board consider to determine whether a bidder is responsible?

A school board may consider any of the following factors to determine if a bidder is responsible:

1) the quality of the work performed on other similar jobs;