

Operational Services

Administrative Procedure - Purchases

The Board Attorney should be consulted, as needed, regarding the legal requirements presented by this administrative procedure as well as before a contract is presented to the Board. ¹

Requirements for Purchases and Contracts

- A. Each of the following requirements describes the type of purchase and/or contract to which it applies; requirements in Sections B and C may also apply to a specific purchase or contract.
1. All purchases of goods or services must be made through the use of contracts or purchase orders, except for those purchases made from petty cash funds or the Imprest Fund, or as otherwise specifically authorized by the Superintendent.
 2. Ill. Use Tax Act compliance (105 ILCS 5/10-20.21(b) and 35 ILCS 105/):
 - a. Persons bidding for and awarded a contract, and all affiliates of the person, must collect and remit Ill. Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provision of the Ill. Use Tax Act.
 - b. All bids and contracts must include: (1) a certification that the bidder or contractor is not barred from bidding for or entering into a contract, and (2) an acknowledgment that the Board may declare the contract void if the certification is false.
 3. All entities seeking to enter into a contract with the District must provide written certification to the District that it will provide a drug free workplace by complying with the Ill. Drug Free Workplace Act, 30 ILCS 580/. All contractors must comply with the notification mandates and other requirements in the Ill. Drug Free Workplace Act. "Contractor" is defined in the Ill. Drug Free Workplace Act as "a corporation, partnership, or other entity with 25 or more employees at the time of letting the contract, or a department, division, or unit thereof, directly responsible for the specific performance under a contract of \$5,000 or more."
 4. Before soliciting bids or awarding a contract for supplies, materials, equipment, or services, a certified education purchasing contract that is already available through a State education purchasing entity (as defined in the Education Purchasing Program, 105 ILCS 5/28A), may be considered as a bid. 105 ILCS 5/10-20.21(d).
 5. All contracts must include provisions required by State or federal law, as applicable. Topics commonly requiring a provision include equal opportunity employment, prevailing wage, minimum wage, and performance bond. ²
 6. The procurement of architectural, engineering, and land surveying services is governed by the Local Government Professional Services Selection Act, 50 ILCS 510/, implemented by 2:170-AP, *Qualification Based Selection*.
 7. A list must be posted on the District's website, if any, of all contracts in excess of \$25,000 and any contract with an exclusive bargaining representative. 105 ILCS 5/10-20.44(b).
 8. Each contractor with the District must comply with 105 ILCS 5/10-21.9(f) and: (a) not allow any of its employees to have direct, daily contact with one or more students if the employee was found guilty

¹ Many legal problems will be avoided by early and frequent consultation with the board attorney. A board cannot use its failure to follow proper bidding or contracting procedures to later avoid payment to contractors or vendors that perform a contract in good faith. *Restore Construction Co., Inc. v. Bd. of Educ. of Proviso Twp. High Sch. Dist. 209*, 444 Ill.Dec. 663 (Ill. 2020).

² For contract provisions required for non-federal entity contracts under federal awards and State awards governed by the Grant Accountability and Transparency Act (30 ILCS 708/), see Appendix II to 2 C.F.R. Part 200, available at: www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200?toc=1.

of any offense listed in 105 ILCS 5/10-21.9(c) or 5/21B-80(c)³; (b) prohibit any of its employees from having direct, daily contact with one or more students if the employee was found guilty of any offense in 5/21B-80(b) (certain drug offenses) until seven years following the end of the employee's sentence for the criminal offense; (c) require each of its employees who will have direct, daily contact with one or more student(s) to cooperate during the District's fingerprint-based criminal history records check on him or her; and (d) reimburse the District for the cost of the fingerprint-based criminal history records check that the District obtains on each employee of a contractor who will have direct, daily contact with a student(s). See 4:60-AP3, *Criminal History Records Check of Contractor Employees*.

9. For each position involving *direct contact with children or students*,⁴ each contractor must perform sexual misconduct related employment history reviews (EHRs) of its employees as required by 105 ILCS 5/22-94, added by P.A. 102-702, and: (a) prohibit any of its employees from having direct contact with children or students if the contractor has not performed an EHR; (b) discipline, up to and including termination or denial of employment, any employee who provides false information or willfully fails to disclose information required by an EHR, and prohibit any such employee from having direct contact with children or students⁵; (c) immediately inform the District of any instances of sexual misconduct involving an employee as provided in 105 ILCS 5/22-94(j)(3); (d) prohibit any of its employees from having direct contact with children or students if the District objects to the employee's assignment after being informed of an instance of sexual misconduct; (e) maintain all records of EHRs and provide copies of such records upon the District's request; and (f) not enter into any agreements prohibited by 105 ILCS 5/22-94(g).⁶ See 4:60-AP4, *Sexual Misconduct Related Employment History Review (EHR) of Contractor Employees*.
10. Each contractor with the District must comply with 105 ILCS 5/24-5 and: (a) concerning each new employee who will provide services to students or in schools, provide the District with evidence of physical fitness to perform the duties assigned and freedom from communicable disease; and (b) require any new or existing employee who provides services to students or in schools to complete additional health examinations as required by the District and be subject to additional health examinations, including tuberculosis screening, as required by the Ill. Dept. of Public Health rules or order of a local health official.⁷
11. Any contract to purchase food with a bidder or offeror must comply with 105 ILCS 5/10-20.21(b-10) (food donations).⁸
12. Any pavement engineering project using a coal tar-based sealant product or high polycyclic aromatic hydrocarbon sealant product for pavement engineering-related use must comply with the Coal Tar Sealant Disclosure Act by (a) requesting a bid with an alternative for asphalt-based or latex-based sealant product, and (b) considering whether an asphalt-based or latex-based sealant product should

³ 105 ILCS 5/10-21.9(c); 105 ILCS 5/21B-80(c).

⁴ See sample policy 4:60, *Purchases and Contracts*, at f/n 12, for the definition of *direct contact with children or students* and its distinction from *direct, daily contact*, which requires a *complete criminal history records check*.

⁵ The law requires contractors to discipline employees who provide false information or willfully fail to disclose information required by a sexual misconduct related employment history review (EHR), but it does not specifically require contractors to prohibit such employees from having direct contact with children or students. 105 ILCS 5/22-94(d), added by P.A. 102-702. This procedure prohibits contractors who have not provided the required EHR information from having direct contact with students as a best practice.

⁶ See sample policy 4:60, *Purchases and Contracts*, at f/n 12, for more information about the types of agreements that are prohibited by 105 ILCS 5/22-94(g), added by P.A. 102-702.

⁷ 105 ILCS 5/24-5. Since 2014, the Ill. Dept. of Public Health (IDPH) has only required school employees in daycare and preschool settings to be screened for tuberculosis. 77 Ill.Admin.Code §696.140(a)(3). Consult the board attorney before requesting a contractor's employee to complete a health examination, to ensure it is legal under other personnel laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*).

⁸ 105 ILCS 5/10-20.21(b-10).

be used for the project based upon costs and life cycle costs that regard preserving pavements, product warranties, and the benefits to public health and safety.⁹

13. Guaranteed energy savings contracts must comply with 105 ILCS 5/19b-1 *et seq.*

14. Design-build contracts must comply with 105 ILCS 5/15A-1 *et seq.*¹⁰

15. Before the Board approves a new contract for a district-administered assessment: (a) the Superintendent or designee must substantially present the terms of the proposal at a regular board meeting, (b) the public must be afforded the opportunity to comment on the proposal at the meeting, and (c) the Board must hold a public vote on the contract at the meeting. The Superintendent or designee shall ensure the assessment is presented in a manner such that the assessment tool and any other intellectual property of the publisher is not able to be widely disseminated to the public.¹¹

B. To the extent feasible, the following govern all purchases and/or the award of contracts for supplies, materials, or work, and/or contracts with private carriers for transporting students, involving: (a) an expenditure of \$35,000 or less, or (b) in an emergency, an expenditure in excess of \$35,000, provided such expenditure is approved by three-quarters of the Board. See 105 ILCS 5/10-20.21(a)(xiv) (3/4s of the members of the Board must approve an emergency expenditure in excess of \$35,000 when the bidding process is not used) and 5/29-6.1, amended by P.A. 103-460 (time limitations for transportation contracts).

1. Telephone quotations, verbal quotations, or catalog prices are used to purchase materials that are needed urgently, or small quantity orders.
2. Written quotations are used to purchase materials or services when time requirements allow. Whenever possible, quotations should be received from at least two competitors. The Superintendent or designee may negotiate with vendors at any time, including after receiving quotations.

C. The following govern all purchases and/or the award of contracts involving an expenditure in excess of \$35,000 for supplies and materials or work. 105 ILCS 5/10-20.21(a).¹²

1. Contracts are awarded to the lowest responsible bidder, considering conformity with specifications, terms of delivery, quality and serviceability, except contracts or purchases for:
 - a. Services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part;
 - b. Printing of finance committee reports and departmental reports;
 - c. Printing or engraving of bonds, tax warrants, and other evidences of indebtedness;
 - d. Perishable foods and perishable beverages;
 - e. Materials and work that 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;
 - f. 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;

⁹ 410 ILCS 170/10(b), added by P.A. 102-242. See the IDPH's *Compliance With the Coal Tar Sealant Disclosure Act: Guidance for Public Schools and Licensed Day Care Facilities* (Jan. 2023), available at: www.dph.illinois.gov/content/dam/soi/en/web/idph/resources/topics-services/environmental-health-protection/toxicology/eh-factsheet-coaltarsealant-header.pdf.

¹⁰ See sample policy 4:60, *Purchases and Contracts*, at f/n 15, for more information regarding the *design-build* delivery method.

¹¹ 105 ILCS 5/10-20.85, added by P.A. 103-393. To protect a publisher's intellectual property rights and the validity of an assessment, districts are required to include technical and procedural safeguards in their review to ensure materials are not widely disseminated to the general public. *Id.* For example, a district may provide a general description of the proposed assessment in board packet materials and at the board meeting, without including the actual content of the assessment tool or its accompanying copyrighted materials.

¹² 105 ILCS 5/10-20.21(a), amended by P.A.s 102-1101 and 103-8, eff. 1-1-24.

- g. Use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and interconnect equipment, software, and services;
- h. Duplicating machines and supplies;
- i. Fuel, including diesel, gasoline, oil, aviation, natural gas, or propane, lubricants, or other petroleum products;
- j. Equipment previously owned by some entity other than the District itself;
- k. 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;
- l. Goods or services procured from another governmental agency;
- m. Goods or services that 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;¹³
- n. Emergency expenditures when such an emergency expenditure is approved by three-quarters of the members of the Board;
- o. Goods procured through an education master contract, as defined in the Education Purchasing Program, 105 ILCS 5/28A; and
- p. Providing for the transportation of students, which contracts must be advertised in the same manner as competitive bids and awarded by first considering the bidder(s) most able to provide safety and comfort for the students, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price.
- q. Goods, services, or management in the operation of a school's food service, including a school that participates in any of the U.S. Dept. of Agriculture's (USDA) child nutrition programs if a good faith effort is made on behalf of the District to give preference to contracts that: (a) procure food that promotes the health and well-being of students, in compliance with USDA nutrition standards for school meals, and contracts should also promote the production of scratch-made, minimally processed foods; (b) give a preference to State or regional suppliers that source local food products; (c) utilize producers that adopt hormone and pest management practices recommended by the USDA; (d) give a preference to food suppliers that value animal welfare; and (e) increase opportunities for businesses owned and operated by minorities, women, or persons with disabilities.

When this exemption applies, the bidder shall submit to the District at the time of the bid, to the best of the bidder's ability, and annually thereafter during the term of the contract, the food supplier data required in this Section q. The food supplier data shall also include the name and address of each supplier, distributor, processor, and producer involved in the provision of the products that the bidder is to supply.

2. Competitive bidding process:

- a. An invitation for bids is advertised, where possible, by 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. 105 ILCS 5/10-20.21(a).
- b. The following information should be included in the advertisement for bids:
 - i. A description of the materials, supplies, or work involved;
 - ii. Completion or delivery date requirements;
 - iii. Requirements for bids, bonds, and/or deposits;
 - iv. Requirements for performance, labor, and material payment bonds;

¹³ See Tarsitano v. Twp. H.S. Dist. No. 211, 385 Ill.App.3d 868 (1st Dist. 2008)(holding that school districts may enter into contracts for utility services, such as "water, light, heat, telephone or telegraph," without using the competitive bidding process).

- v. Date, time, and place of the bid opening;
 - vi. The approximate time period between the opening of bids and the award of the contract; and
 - vii. Any other useful information.
- c. If specifications are available, the advertisement for bids describes where they may be obtained and/or inspected.
- d. All bids must be sealed by the bidder. 105 ILCS 5/10-20.21(a).
- e. A Board member or District employee opens the bids at a public bid opening at which time the contents are announced. 105 ILCS 5/10-20.21(a). Bids may be communicated, accepted, and opened electronically. The following safeguards apply to an electronic bid opening (105 ILCS 5/10-20.21(a)):
 - i. On the date and time of a bid opening, the primary person conducting the 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.
 - ii. 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.
- f. Each bidder is given at least three days' notice of the time and place of the bid opening. 105 ILCS 5/10-20.21(a).
- g. Conduct that promotes deception and collusion during the bidding process is prohibited and may violate the Ill. Criminal Code, 720 ILCS 5/33E-1 et seq. Examples include interference with public contracting, bid-rigging, and acquisition or disclosure of bidding information by a public official.
- 3. Following the opening of bids, the Superintendent (and Board Attorney, if needed) determines the lowest responsible bidder and verifies the bidders' qualifications. Contracts are awarded at a properly called open meeting of the Board. If the Superintendent recommends a bidder other than the lowest bidder, the Superintendent must provide the Board with the factual basis for the recommendation in writing. The Board, if it accepts a bid from a bidder other than the lowest, records the factual basis for its decision in its minutes. A contract arises only when the Board votes to accept a bid, although written notice of the award will later be given to the successful bidder.
- 4. Notwithstanding the foregoing, the District is relieved from bidding when making joint purchases with other public entities in compliance with the Governmental Joint Purchasing Act. 30 ILCS 525/.

LEGAL REF.: 105 ILCS 5/10-20.21, 5/10-20.44, 5/10-20.85, 5/10-21.9, 5/19A-1 et seq., 5/21B-80, 5/22-94, and 5/24-5.

30 ILCS 580/, Ill. Drug Free Workplace Act.

35 ILCS 105/, Ill. Use Tax Act.

50 ILCS 510/, Local Government Professional Services Selection Act.

410 ILCS 170/10, Coal Tar Sealant Disclosure Act.