

BIDDING PUBLIC WORKS PROJECTS



When a non-home rule municipality intends to award a contract for any public work or public improvement and the expense is expected to exceed \$25,000, [Section 8-9-1 of the Illinois Municipal Code](#) requires the award of the contract to the lowest responsible bidder after advertising for bids, in the manner prescribed by municipal ordinance.¹

Home rule municipalities are not subject to these bidding requirements, but may be required to bid change orders in the same manner as the original contract award as described on the next page.² Bidding provisions that apply only to the City of Chicago are set out separately in [Section 8-10-1 of the Illinois Municipal Code](#).³

EXEMPTIONS FROM BIDDING REQUIREMENTS

The Illinois Municipal Code provides various exemptions from state-mandated bidding requirements if:

- Contracts are paid for in whole or in part by special assessment or special taxation;⁴
- Contracts are approved by a two-thirds vote of the alderpersons or trustees then holding office,⁵ or by four of the five members of the city council in a municipality that adopted the commission form of government;⁶
- Contracts are with the federal government or any agency of the federal government;⁷ or,
- Work or public improvement is undertaken directly by the municipality and approved by a two-thirds vote of the alderpersons or trustees then holding office,⁸ or by four of the five members of the city council in a municipality that adopted the commission form of government,⁹ provided materials in excess of \$25,000 shall be let by contract to the lowest responsible bidder.¹⁰

Bidding requirements do not apply to contracts for supplies or for services not related to public works or public improvements. Municipalities may require competitive bidding on supply contracts by ordinance, but are not required to do so.¹¹

ADOPT BIDDING PROCESS BY ORDINANCE

Municipalities may establish a competitive bidding process by ordinance to meet their needs.¹² A municipal ordinance may provide: the method of advertisement for bids; the right of a municipality to reject all bids; the requirement that all bids be submitted by way of sealed bids by the deadline set forth in bid specifications; and, in written format rather than emailed or faxed. The ordinance should provide that all bids will be opened in public, at a time and place as set forth in bid specifications. An ordinance adopted under this Section may contain exemptions for

¹ [65 ILCS 5/8-9-1](#)

² [50 ILCS 525/1 et seq.](#)

³ [65 ILCS 5/8-10-1 et seq.](#)

⁴ [65 ILCS 5/8-9-1](#)

⁵ *Id.*

⁶ [65 ILCS 5/4-5-11\(1\)](#)

⁷ [65 ILCS 5/8-9-1](#)

⁸ *Id.*

⁹ *Id.*

¹⁰ [65 ILCS 5/8-9-1](#)

¹¹ [65 ILCS 5/8-9-2](#)

¹² [65 ILCS 5/8-9-2](#)



emergencies.¹³ Bidding process provisions in [65 ILCS 5/8-10](#) only apply to the City of Chicago, but may be a helpful guide for establishing a bidding process for your municipality. The Illinois Municipal League has compiled sample ordinances from municipalities that have adopted them on its website.¹⁴

SELECTION OF A RESPONSIBLE BIDDER

A responsible bidder may be selected on the basis of qualifications, past experience, credentials, financial information, bonding capacity, insurance limits, ability to complete the contract and respond timely to the municipality, as well as other factors that may be described in bid specifications. Any factors leading to a selection of a bidder that did not submit the lowest monetary bid should be fully documented. A bid may be awarded to a vendor despite a variance from the specifications, but a material variance (one that provides the vendor with an advantage or benefit not available to other bidders) should disqualify the vendor.

Municipal officials should avoid interfering with the competitive bidding process. Communication with participants after the bid specifications are published should be restricted to avoid providing an advantage to any bidder. Challenges to bid awards often focus on clarifications that are not provided to all interested parties.

Restrictions on communications with bidders may be included in a code of ethics, purchasing ordinance or other policy. The bidding process is subject to the Interests in Contracts provisions of the Illinois Municipal Code,¹⁵ the Public Officer Prohibited Activities Act¹⁶ and the Interference with Public Contracting provisions of the Illinois Criminal Code.¹⁷ Significant penalties and removal from office may result from violations of these statutory restrictions on municipal officials.

MUNICIPAL AUTHORITY TO UTILIZE DESIGN-BUILD CONTRACTS

Public Act 103-0491, effective January 1, 2024, authorizes all municipalities to use the design-build process.

A design-build contract is a single agreement between a municipality and contractor or other entity that covers both the design and construction phases of a project. Design-build contracts include the furnishing of architecture, engineering, land surveying and related services, labor, materials, equipment and other construction services needed for a project.¹⁸

Fourteen days prior to issuing a design-build proposal request, municipalities must issue a notice of intent to receive proposals and publish the notice where outlined by ordinance, including posting online to the municipal website. A brief description of the proposed procurement must be included in the notice and the municipality must provide a copy of the request for proposals to any party requesting a copy.

Municipalities must use a two-phase procedure for the selection of a design-build bid.

- Phase I – Evaluate the proposing entities based on qualifications; and,
- Phase II – Evaluate the technical and cost proposals.

For projects with an estimated cost to be less than \$12,000,000, a municipality may combine the two-phase procedure for selection into one combined step, if all the requirements of evaluation are performed in accordance with the Act.

PUBLIC WORKS CONTRACT CHANGE ORDER ACT

Conditions may be discovered during a project, or other circumstances may arise, that require a change order to complete a project. If a change order for any public works contract for a unit of local government, including

¹³ *Id.*

¹⁴ <https://www.iml.org/page.cfm?category=2185>

¹⁵ 65 ILCS 5/3.1-55-10

¹⁶ 50 ILCS 105/0.01 *et seq.*

¹⁷ 720 ILCS 5/33E-1 *et seq.*

¹⁸ 65 ILCS 5/11-39.2-10



a municipality, authorizes or necessitates any increase in the contract price that is 50% or more of the original contract price, or that necessitates an increase in the price of a subcontract that is 50% or more of the original subcontract price, then the portion of the contract that is covered by the change order must be resubmitted for bidding in the same manner by which the original contract was bid. The Public Works Contract Change Order Act¹⁹ preempts home rule authority²⁰ and requires all municipalities, regardless of home rule status, to award change orders with costs that are 50% or more of the original contract in the same manner as the original contract award.²¹

ARCHITECTS AND ENGINEERS

Many projects that are subject to bidding requirements also require the retention of architects or engineers. The selection of architects or engineers by a non-home rule municipality is subject to the Local Government Professional Services Selection Act.²² For information on this process, see the Illinois Municipal League's (IML) fact sheet on [Updated Qualifications-Based Selection \(QBS\) Threshold \(available via this link\)](#).

JOINT PURCHASING

Public Act 103-0865, effective August 9, 2024, provides for alternative purchasing procedures for joint and cooperative purchasing by participating units of government.²³ Under the Act, chief procurement officers may authorize any governmental unit of this state to purchase or lease supplies under a contract which has been procured under the jurisdiction of the Illinois procurement code. For more information on this process, see IML's fact sheet on [Municipal Participation in State Joint Purchasing Master Contracts \(available via this link\)](#).

If there are any questions or concerns regarding bidding requirements or processes, municipal officials should consult with their retained legal counsel.

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¹⁹ [50 ILCS 525/1 et seq.](#)

²⁰ [50 ILCS 525/10](#)

²¹ [50 ILCS 525/5](#)

²² [50 ILCS 510/0.01 et seq.](#)

²³ [30 ILCS 525/0.014 et seq.](#)

