

Foolproof Contracts that Abide by State Laws

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Introductions

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Contracts in General

- What Constitutes a Contract?
- Purchase Orders
- Bid Documents and Specifications
- Contract Terms

Practical Considerations

- What am I able to negotiate?
 - Professional Service
 - Bid or RFP
- Who has signatory authority?
 - Board Policy
 - Administrative Procedures
 - Employee Handbook

Practical Considerations

- Where are executed contracts filed?
 - Central Location
 - Oversight
 - Records Retention
 - Freedom of Information Act (FOIA) Requests

Contract Language and Critical Clauses

- Prevailing Wage Act Compliance
 - Applies to contracts for “public works” which are defined as “fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds.” 820 ILCS 130/2. This includes “any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.” *Id.*

Contract Language and Critical Clauses

- Prevailing Wage Act Compliance
 - If your District has a contract for “public works”, District should require the contractor to comply with all requirements of the Prevailing Wage Act.
 - Currently, contractors are required to submit certified payrolls to public bodies on a monthly basis under Section 5 of the Act. By April 1, 2020, the Dept. of Labor will implement an electronic database for the certified payrolls.

Contract Language and Critical Clauses

- Payment and Performance Bonds (30 ILCS 550/1)
 - Each contract for public work in Illinois exceeding \$50,000 requires the contractor to furnish performance and payment bonds in the full amount of the contract.

Contract Language and Critical Clauses

- A Performance Bond is:
 - A surety company's guarantee to the owner that the contractor will complete the project in accordance with the contract, and defines the duty of the surety to the owner in the event of the contractor's default.
- A Payment Bond is:
 - A surety company's guarantee to the owner that the contractor will pay all contractors furnishing material and/or labor on the project, in accordance with the contract.

Contract Language and Critical Clauses

- Contract Bond Requirements:
 - Districts should require each contractor having a contract with the District to have the bonds required by the Public Construction Bond Act, 30 ILCS 550/1, *et seq.*
 - If District is paying subcontractors directly (if using a construction manager), the subcontractors may be required to provide the bond.

Contract Language and Critical Clauses

- Performance and Payment Bond Safe Practice Pointer:
 - Confirm that bonds are valid before work on the project begins, and promptly get surety involved if dispute arises concerning performance.

Contract Language and Critical Clauses

- Insurance
 - The contract should require the vendor to maintain commercial general liability insurance, automobile liability insurance, worker's compensation insurance, as well as an umbrella insurance policy with minimum coverage amounts acceptable to the District.
 - In some contracts, it is also advisable to require professional liability coverage.

Contract Language and Critical Clauses

- Insurance
 - The school board, its officers, employees and agents should be named as additional insureds on the commercial general liability, automotive liability and umbrella policies.

Contract Language and Critical Clauses

- Indemnification
 - Contracts should contain an indemnification provision requiring the vendor to indemnify and hold the School District harmless against any liabilities the District might incur as a result of the vendor's negligence or breach of contract.

Contract Language and Critical Clauses

- Limitation of Liability
 - These clauses attempt to limit the vendor's liability to a specific dollar amount. Some of these clauses even attempt to limit this liability for intentional wrongdoing on the part of the vendor. All limitation of liability clauses should be deleted in their entirety.

Contract Language and Critical Clauses

- Disclaimer of Warranties
 - Most form contracts contain language which disclaims the implied warranty of merchantability as well as the implied warranty of fitness for a particular purpose. These two warranties are statutorily construed in all commercial contracts unless specifically disclaimed in bold print.

Contract Language and Critical Clauses

- Disclaimer of Warranties
 - These two warranties protect the District against defects in the materials provided pursuant to the contract (implied warranty of merchantability) as well as guarantee that the materials will perform as represented by the vendor (implied warranty of fitness for a particular purpose).

Contract Language and Critical Clauses

- Disclaimer of Warranties
 - All language disclaiming these warranties should be deleted from the contract form. In the alternative, an express warranty should be included in the form specifically addressing all representations made by the vendor to guarantee that the equipment will perform as expected.

Contract Language and Critical Clauses

- Statute of Limitations
 - Form contracts often contain a provision requiring that a lawsuit for breach of the agreement be brought within a specified time. This time period is often shorter than the time period allowed under Illinois law to bring such a lawsuit. All statute of limitations paragraphs should be deleted from the form contract in that Illinois law will control the time period to bring a lawsuit.

Contract Language and Critical Clauses

- Automatic Renewals
 - Some service contracts contain a clause that the contract will automatically re-new unless cancelled in writing within a specified number of days before the end of the term. This clause should be modified to require mutual consent of the parties to re-new any contract.

Contract Language and Critical Clauses

- Attorneys' Fees
 - Most form contracts provided that should a lawsuit be necessary, the vendor will be entitled to recover their attorney fees if they are successful. This paragraph should be either deleted in its entirety or be modified so that the attorneys' fee provision is made mutual and that either party will recover their attorneys' fees if successful in litigation.

Questions and Answers

We thank you for your time!

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