

Outsourcing: Legal Issues to Know

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Introductions

Catherine Nelson, Speaker, Moderator
- *Asst. Superintendent of Business, CSBO,*
Crystal Lake Elementary School District47,



Kevin B. Gordon, Speaker,
- *Partner, Kriha Boucek. LLC*



Approval and Effective Date

The Board must not enter into a contract to outsource non-instructional services, and the contract may not become effective during the term of a collective bargaining agreement covering any employees who perform the services. 105 ILCS 5/10-22.34c(a)(1).

The contract may only take effect upon the expiration of an existing collective bargaining agreement. 105 ILCS 5/10-22.34c(a)(2).

Generally, the earliest date will be July 1, but check your CBA to determine the last day of its term.

Notice

The Board must provide 90 days written notice to affected employees of the layoff.

- Typically, notice of a layoff only requires 30 days advanced notice.
- Given the timing of the overall process, notice to the Union will likely need to provide that the layoff notices are sent as a contingency in the event the Board, after engaging in good faith negotiations with the Union, decides to approve the contract to outsource the non-instructional services.

The Process – Bid Requirements

Bid Requirement #1 - Insurance

Evidence of liability insurance in scope and amount equivalent to liability insurance provided by the school board pursuant to Section 10-22.3 of the School Code. 105 ILCS 5/22-34c(a)(3)(A).

- General Liability (Personal Injury, Death, Property Damage)
- Employer Liability

Bid Requirement #2 - Benefits

Benefits package for the 3rd Party's employees who will perform the non-instructional services **comparable** to the benefits package provided to school district employees who perform those services. 105 ILCS 5/10-34c(a)(3)(B).

“Comparable” means “similar” or “like”, NOT necessarily the “same.”

Types of Benefits to Consider:

- Health Insurance
- Life Insurance
- Vacation, Sick, Personal Days
- Uniform Allowance/Reimbursement

NOTE: The District will need to disclose its benefits package in the bid specifications.

Bid Requirement #3 – Staffing & Wages

A list of the number of employees who will provide the non-instructional service, the job classifications of those employees, and the wages the 3rd Party will pay those employees. 105 ILCS 5/10-22.34c(a)(3)(C).

- Does not require listing of names – only numbers, classifications, and wage rates.

Bid Requirement #4 – Cost Projection

A minimum 3-year cost projection, using generally accepted accounting principles and which the 3rd Party is prohibited from increasing if the bid is accepted by the school board, for each and every expenditure category and account for performing the non-instructional services.
105 ILCS 5/10-22.34c(a)(3)(D).

- Use the school district budget form / IPAM as a guide for expenditure categories and accounts

Bid Requirement #5 – Employee Conduct

Composite information about the criminal and disciplinary records, including alcohol and other substance abuse, Department of Children and Family Services complaints and investigations, traffic violations, and license revocations or any other licensure problems, of any employees who may perform the non-instructional services. 105 ILCS 5/10-22.34c(a)(3)(E).

- Individual names or identifying information need not be included in bid submission, but must be available to school board upon request.

Bid Requirement #6 – Criminal Background Checks

Affidavit, notarized by the president or chief executive officer of the 3rd Party, that each of its employees has completed a criminal background check as required by Section 10-21.9 of the School Cde within 3 months prior to submission of the bid. 105 ILCS 5/10-22.34c(a)(3)(F).

- Results of background checks need not be included in bid submission, but must be made available to school board upon request.

Review of Bids

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Cost Comparison

School Board must provide a cost comparison, using generally accepted accounting principles, of each and every expenditure category and account that the school board projects it would incur over the term of the contract if it continued to perform the non-instructional services using its own employees with each and every expenditure category and account that is projected a 3rd Party would incur if a 3rd Party performed the non-instructional services. 105 ILCS 5/10-22.34c(a)(4).

- Does not require that school district costs be higher than 3rd Party costs.
- Use school district budget form / IPAM as a guide.

Review in Open Session

Review and consideration of all bids by 3rd parties shall take place in open session of a regularly scheduled school board meeting, unless the union, if any, agrees in writing agrees the review can take place in open session at a special meeting. 105 ILCS 5/10-22.34c(a)(5).

- Does not preclude administrative review, analysis, and summarization to prepare for the board meeting.

Public Hearing

Minimum of **one** public hearing, conducted by the school board prior to a regularly scheduled school board meeting, to discuss the school board's proposal to contract with the 3rd Party. 105 ILCS 5/10-22.34c(a)(6).

- Notice of Hearing – Must notify public of date, time, location of first public hearing.
- Notice of Hearing must be made (1) on or before date bids are solicited or (2) a minimum of 30 days prior to entering such contract, **whichever provides a greater period of notice.**

Contract Requirements

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Offer of Available Positions

The contract must include a provision requiring the contractor to offer available employee positions to qualified school district employees whose employment is terminated because of the contract. 105 ILCS 5/10-22.34c(a)(7).

Non-Discrimination Clauses

The contract must contain provisions requiring the contractor to comply with a policy of non-discrimination and equal employment opportunity for all persons and to take affirmative steps to provide equal opportunity for all persons. 105 ILCS 5/10-22.34c(a)(8).

Short –Term Contracts

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Emergency Situations

School boards may enter into a contract with a term **no longer than 3 months** for purpose of **augmenting the current workforce** in an **emergency** situation that **threatens the safety or health** of the school district's students or staff, provided the school board meets all of its obligations under the Illinois Educational Labor Relations Act. 105 ILCS 5/10-22.34c(b).

Questions and Answers

We thank you for your time!

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Presenters:

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