

In Brief

April 13, 2020

Electronic Bidding Requirements in Light of COVID-19 Shutdown

The COVID-19 crisis and ensuing Executive Orders, including the “Stay at Home” order, have resulted in significant changes in the way school districts operate, including for public bid openings. We previously issued an In Brief which included a “best practices” for public bid openings under the “Stay at Home” order. (See [March 23, 2020](#) In Brief, p. 16.) However, due to language in the Governor’s Executive Order 2020-15, issued March 27, 2020, many school districts and contractors have had questions regarding whether electronic bid openings are permissible for construction projects and the requirements for any electronic bid process.

The good news is that electronic bid openings are permissible for construction projects, but the existing safeguard requirements remain in place. Section 9 of Executive Order 2020-15 suspended the provision in Section 10-20.21 of the School Code that prohibited electronic bids for construction purposes. While Executive Order 2020-15 allows construction bids to be communicated, accepted, and opened electronically, it did not change or relax the safeguard requirements in Section 10-20.21 for electronic bidding. Thus, the Executive Order did not affect non-construction related bids.

In short, bidders cannot simply submit bids via email as such bids would not be “sealed” since the recipient of the bid could open the bid before the scheduled bid opening. As a result, Section 10-20.21 requires, at a minimum, two specific safeguards for the electronic bidding process:

- First, the bid process must use a database that allows bidders to access their specific bids through a unique username and password, and the district employee conducting the bid process shall log onto the database on the date and time of the bid opening.
- Second, there are a number of security requirements for the network that hosts the database, including that it be in a secure environment behind a firewall, has specific encryption tools, maintains intrusion detection systems, has a data storage backup, and maintains a disaster recovery plan.

If school districts have a database and network that meet these requirements, then the bids can be opened electronically. Otherwise, a public bid opening is still required in the manner described in the March 23, 2020 In Brief.

If you have any questions with electronic bids or public bid openings, please contact a Robbins Schwartz attorney.