


Robbins Schwartz Purchasing & Construction Virtual Conference

April 11, 2024
8:30 a.m. – 12:00 p.m.

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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice.
If you have an individual problem or incident that involves a topic covered in this document,
please seek a legal opinion that is based upon the facts of your particular case.

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**PURCHASING AND CONSTRUCTION VIRTUAL CONFERENCE
APRIL 11, 2024**

AGENDA

- 8:30 a.m. – 9:15 a.m. **GENERAL SESSION**
- Maintaining Control and Best Practices for Bidding Procurement
- Presented by: Howard A. Metz and Kenneth M. Florey
- 9:15 a.m. – 10:00 a.m. Contractor Defaults: Practical Considerations for Owners to Reduce the Likelihood of a Contractor Default and Strategies to Implement if a Default Occurs
- Presented by: Matthew J. Garder and Nicole L. Karas
- 10:00 a.m. – 10:15 a.m. Break
- 10:15 a.m. – 11:00 a.m. **RESUME GENERAL SESSION**
- Your Board May Want to Borrow Money – Now What?
- Presented by: Brittany Flaherty Theis and Katie N. DiPiero
- 11:00 a.m. – 11:45 a.m. Top 10 Considerations for Real Estate: Strategies to Protect Your Property Rights and Ensure a Smooth Transaction
- Presented by: Matthew J. Gardner and Christopher R. Gorman
- 11:45 a.m. – 12:00 p.m. Interactive Problem Solving for Purchasing and Construction
- Presented by: Howard A. Metz, Kenneth M. Florey, Matthew J. Garder, Nicole L. Karas, Brittany Flaherty Theis, Katie N. DiPiero, and Christopher R. Gorman

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One Team. Making Your Mission Ours.

MAINTAINING CONTROL AND BEST PRACTICES FOR BIDDING PROCUREMENT

April 11, 2024

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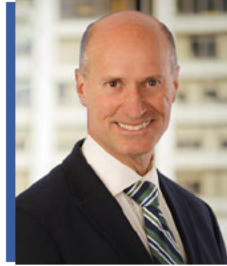
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Introductions



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|| The Duty
To Publicly
Bid



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The Duty To Publicly Bid

- In Illinois, public bodies are generally required to use a public bidding process when purchasing supplies, materials, services and work over a specified dollar amount.
- Each public body is governed by its own statute, which dictates the threshold amount over which contract must be bid.



The Duty To Publicly Bid



Those statutes also contain numerous exceptions to the public bidding requirement.



The statutes also dictate the procedure for the bid process, such as the notice requirements for publication and the time period between the bid notice and the bid opening.

The Duty To Publicly Bid

ILLINOIS PUBLIC ENTITY	STATUTE	PUBLIC BIDDING THRESHOLD	EXCEPTIONS TO PUBLIC BIDDING REQUIREMENT
School Districts	105 ILCS 5/10-20.21	<p><u>\$35,000</u> (unless lower amount required by board policy)</p> <p>Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility.</p>	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Perishable foods and beverages • Maintenance or servicing of equipment by the manufacturer or its authorized agent • Information technology • Duplicating machines or supplies • Natural gas • Equipment previously owned by another entity • Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility • Goods and services from another governmental agency • Goods and services procurable from only one source (e.g., magazines, periodicals, etc.) • Emergency expenditure with approval of 3/4 of board members • State master contracts • Transportation contracts must be bid but factors other than price can be used to determine award



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The Duty To Publicly Bid

ILLINOIS PUBLIC ENTITY	STATUTE	PUBLIC BIDDING THRESHOLD	EXCEPTIONS TO PUBLIC BIDDING REQUIREMENT
Community College Districts	110 ILCS 805/3-27.1	<p>\$25,000 (unless lower amount required by board policy)</p> <p>Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility</p>	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Perishable foods and beverages • Maintenance or servicing of equipment by the manufacturer or its authorized agent • Information technology • Duplicating machines or supplies • Natural gas • Equipment previously owned by another entity • Construction not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility • Goods and services from another governmental agency • Goods and services procurable from only one source • Emergency expenditure with approval of 3/4 of board members



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The Duty To Publicly Bid

ILLINOIS PUBLIC ENTITY	STATUTE	PUBLIC BIDDING THRESHOLD	EXCEPTIONS TO PUBLIC BIDDING REQUIREMENT
Park Districts	70 ILCS 1205/8-1(c)	\$30,000	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Utility services • Information technology • Duplicating machines or supplies • Goods and services from another governmental agency • Equipment previously owned by another entity • Magazines, books, periodicals, pamphlets and reports • Emergency expenditure with approval of 3/4 of board members



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The Duty To Publicly Bid

ILLINOIS PUBLIC ENTITY	STATUTE	PUBLIC BIDDING THRESHOLD	EXCEPTIONS TO PUBLIC BIDDING REQUIREMENT
Library Districts	75 ILCS 5/5-5	\$25,000	<ul style="list-style-type: none"> • Services of individuals possessing a high degree of professional skill • Printing of finance committee reports and departmental reports • Printing or engraving bonds, tax warrants, etc. • Maintenance or servicing of equipment by the manufacturer or its authorized agent • Information technology • Duplicating machines or supplies • Utility services • Goods and services from another governmental agency • Equipment previously owned by another entity • Goods and services procurable from only one source (e.g., magazines) • Emergency expenditure with approval of 3/4 of board members



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The Duty To Publicly Bid

ILLINOIS PUBLIC ENTITY	STATUTE	PUBLIC BIDDING THRESHOLD	EXCEPTIONS TO PUBLIC BIDDING REQUIREMENT
Counties	55 ILCS 5/5-1022	\$30,000 (counties with less than 2,000,000 inhabitants) Information technology less than \$35,000	<ul style="list-style-type: none"> Professional services Emergency authorized by board Contracts with the federal government Equipment previously owned by another entity Purchases at auction Information technology less than \$35,000



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The Duty To Publicly Bid

ILLINOIS PUBLIC ENTITY	STATUTE	PUBLIC BIDDING THRESHOLD	EXCEPTIONS TO PUBLIC BIDDING REQUIREMENT
Municipalities (less than 500,000 inhabitants)	65 ILCS 5/8-9	\$25,000 (public improvements and their maintenance) Not obligated by statute to bid service contracts or contracts for materials; however, many municipalities have adopted ordinances requiring competitive bidding	<ul style="list-style-type: none"> Authorization by a vote of 2/3 of its aldermen or trustees Contracts with the federal government



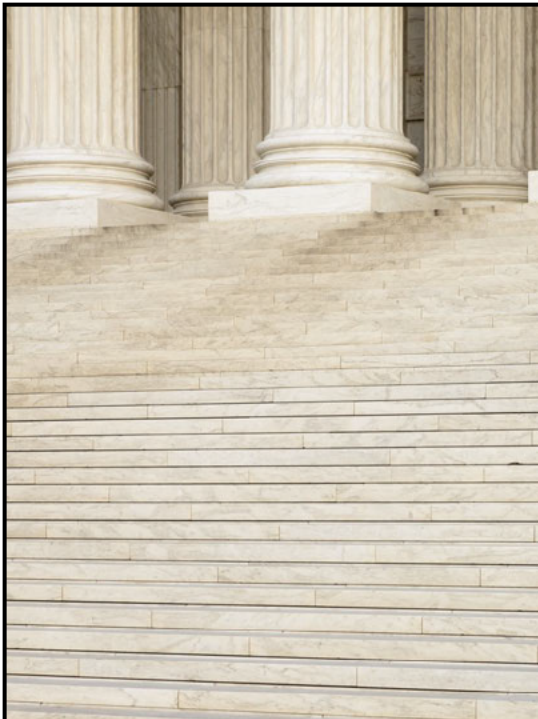
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Governmental Joint Purchasing



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Governmental Joint Purchasing

- Authority to do pursuant to IL Constitution – Intergovernmental Cooperation Act (5 ILCS 220/1) and Joint Purchasing Act (30 ILCS 525/1).
- Supersedes the requirements of the individual bidding requirements. 30 ILCS 525/2.
- Purchase of personal property, supplies and services. Id.



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Governmental Joint Purchasing

- Needs to meet certain legal requirements:
 - Cooperative must be run by a **government body**. 30 ILCS 525/1-2.
 - Purchases must be based on **competitive solicitations**. 30 ILCS 525/2.
 - Bids and proposals solicited by **public notice** as specified by the Joint Purchasing Act. 30 ILCS 525/4.



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Governmental Joint Purchasing

- All purchases, orders or contracts shall be awarded to the **lowest responsible bidder or highest-ranked proposer**, taking into consideration:
 - The **qualities** of the articles or services supplied;
 - Their **conformity** with the specifications;
 - Their **suitability** to the requirements of the participating governmental units; and
 - The **delivery** terms. Id.



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Governmental Joint Purchasing



The managing unit of government must **maintain a record**, identifying each bid, bidder's identity, and the successful bid. Id.



After award the record must be **open to public inspection**. Id.



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Governmental Joint Purchasing

- Purchases must be made in compliance with the **Local Government Prompt Payment Act**. 30 ILCS 525/4.1
- The personal property, supplies or services involved shall be **distributed or rendered directly** to each governmental unit taking part in the purchase. 30 ILCS 525/3.
- The Seller **bills each governmental unit separately** for its proportionate share of the cost of the personal property, supplies or services purchased. Id.
- The **credit or liability** of each governmental unit shall remain separate and distinct. **Disputes** between bidders and governmental units shall be resolved between the immediate parties. Id.



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Governmental Joint Purchasing

- Strategies for Success with Joint Purchasing options:
 - Get informal quotes or estimates from local vendors/contractors first. It may be cheaper to use the traditional bidding method.
 - Look at the offerings of all of the cooperatives before deciding to “qualify” one particular cooperative.



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Governmental Joint Purchasing

- Strategies for Success with Joint Purchasing options:
 - Examine the terms for participation:
 - Is there an entry fee?
 - Is there a participation fee?
 - Are there other costs of participation?



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Governmental Joint Purchasing

- Strategies for Success with Joint Purchasing options:
 - Have legal counsel provide an opinion on whether participation in a particular cooperative will meet the requirements of Illinois law.
 - Examine the proposed contract (or have your counsel examine it).
 - Identify any unacceptable business or legal terms and conditions.
 - Confirm in advance that you will be able to amend terms and conditions to meet your business expectations, and to comply with Illinois law.

Local Government Professional Services Selection Act - 50 ILCS 510/0.01

- RFP/RFQ process required for the selection of Architects, Engineers & Land Surveyors
- RFP can be solicited by either publication, posting on your website, or sending notice to firms who have a current statement of qualifications with the public body



Local Government Professional Services Selection Act - 50 ILCS 510/0.01

RFP not required if the public body has a previous satisfactory relationship with the firm.

RFP not required for contracts less than \$40,000 or in emergency situations.



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The Bidding
Process



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Bid Submittals

- Bid Specifications
 - Certainty Required
 - Qualification Criteria
 - Sole Sourcing
 - Bid Addendum & Questions
 - Pre-Bid Meeting

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Bid Submittals

- Sealed Bids
- Electronic Bids
- Timeliness of Bids
- Modification, Withdrawal or Re-submittal of Bids Before Bid Opening



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Bid Submittals

- Public Opening and Reading of the Bids
 - Withdrawal or Modification after the Bids Are Received



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Awarding The Bid – Criteria

- Lowest
 - Alternate Bids
- Responsive
 - Material Defects – Nonwaivable
 - Minor Variances – Waivable
- Responsible
 - Pre-qualification of Bidders
- Post-Bid Pre-Award Negotiations



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Rejecting The Bid

Discretion “to reject any and all bids.”

Documenting the Basis for Awarding/Rejecting Bid



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CONTRACTOR DEFAULTS: PRACTICAL CONSIDERATIONS FOR OWNERS TO REDUCE THE LIKELIHOOD OF A CONTRACTOR DEFAULT AND STRATEGIES TO IMPLEMENT IF A DEFAULT OCCURS

April 11, 2024

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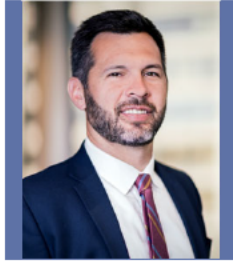
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Introduction



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2



What is Contractor Default?

- Breach of the Agreement:
 - Timing Issues: Delay or failure to complete the work on time.
 - Performance Issues: Failure to complete the work in accordance with the Contract Documents.
 - Payment Issues: Failure to pay subcontractors and material suppliers.



3

Practical Considerations to Protect Owner from Contractor Default

- Bidding
- Contract Terms
- During the Construction Phase
- Strategies after Default Occurs



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Bidding – Bid Selection

- Award to the lowest responsible bidder.
- More than just lowest dollar amount.
- Ability to perform the contractor's obligations in accordance with what may be expected or demanded under the terms of the contract.
- Establish clear criteria in bid documents to determine responsibility.



5

Bidding – Bid Selection

- Bidder must be responsible:
 - Record of integrity.
 - Past performance record.
 - Ability to meet delivery schedules.
 - Current workload and employee availability.
 - Litigation filed against bidder.
 - Financial resources.



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Bidding – Bid Selection

- Review of bid proposal:
 - Failure to submit all required documentation.
 - Low bid amount or bid mistake.



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Bidding – Bid Bonds

- Bid Bonds:
 - Bidders submit with bid.
 - Protects owner if successful bidder does not enter contract and owner must award to next lowest bidder.
 - Security for performance and payment bonds.
 - Evidence that bidder is legitimate and has the financial resources to complete the project.



8

Contract Terms Performance and Payment Bonds

- Public Construction Bond Act, 30 ILCS 550/1 *et seq.*
- 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.



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Contract Terms Performance and Payment Bonds

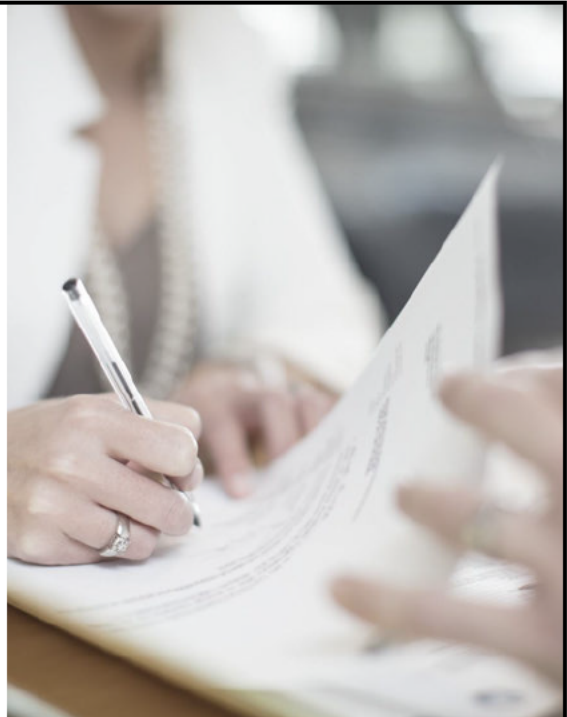
- Public Construction Bond Act, 30 ILCS 550/1 *et seq.*
- Public Act 103-570, effective January 1, 2024:
 - **Now required for public works projects over \$150,000 (used to be \$50,000).**
 - Through January 1, 2029, then reverts to \$50,000.
 - \$150,000 and under may require bonds by resolution or ordinance.
 - Verify bonds are not fraudulent.



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Contract Terms Payment

- Retainage: withholding of certain % of contract sum to ensure contractor completes the job.
- New retainage rules (Public Act 103-570):
 - If project is over \$150,000:
 - 10% retainage until 50% of the contract is complete;
 - After 50% complete 5% may be withheld.
 - Payment upon final completion for projects \$150,000 and lower if no bonds.



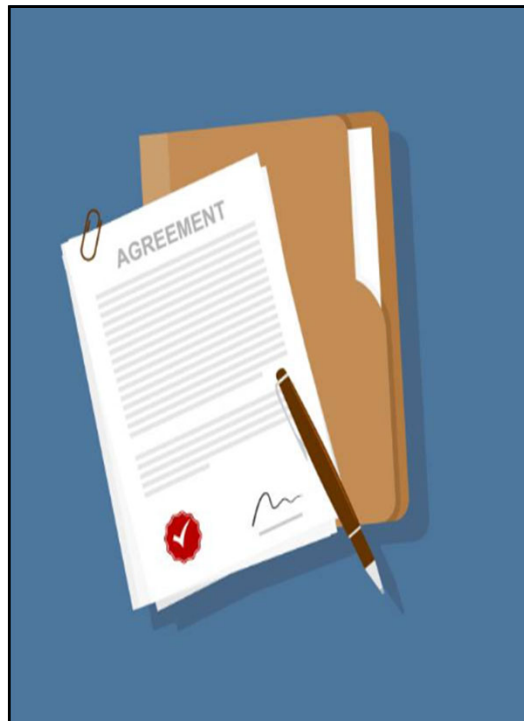
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Contract Terms

- Waiver of Liens and Sworn Affidavits.
- Time for performance (schedule) - Substantial and Final Completion Date.
- Liquidated damages - tied to SC and FC dates; fee if dates not met.



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Contract Terms

- Insurance
- Indemnification
- Assignment of subcontracts
- Events of default and remedies
- Termination and take over clauses
- Warranty



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Limiting Risk During Construction

- Consider hiring Architect/Engineer or Construction Manager to oversee construction.
- Construction observation:
 - Progress of work to meet completion dates;
 - Performance issues;
 - On-site issues.
- Review and certify pay applications and waivers of lien.
- Communication.



14

Common Construction Problems

- Problems Prior to Substantial Completion
 - Delays in Ordering Equipment: Substitutions/Change Orders
 - Unforeseen Conditions: Change Orders
 - Scheduling Problems
 - Defective Work
 - Injuries/Accidents
- Problems After Substantial Completion
 - Payment Claims and Section 23 Mechanics Liens
 - Warranty Claims
 - Defects – Construction or Design?



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Construction Phase Problems: When is Termination of Contractor the Right Move?

- Problems Will Arise: Try to Minimize through Communication and Consider the Ramifications of Termination
- What should owners think about before exercising the nuclear option of termination?
 - Can a new contractor complete the work?
 - Will it cost more? Will the bond cover the additional cost? Will it take longer? Will it be the same quality or better/worse? Bidding requirements?
 - Warranties with multiple contractors on site?
 - Potential litigation?
 - Will the current contractor ever be able to complete the work?
 - Will it be good workmanship? Create dangers/hazards?
 - Trustee of public money – does the contractor deserve to be able to finish and be paid?



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Construction Litigation

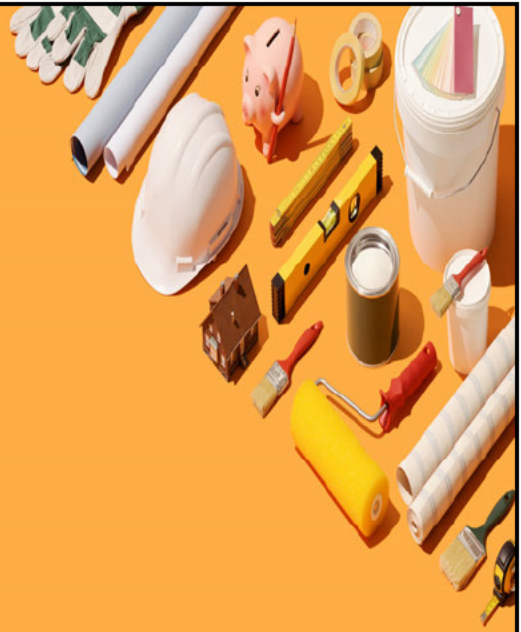
- Evidence of Defects: How are you going to prove your case? What evidence to you have?
 - The more documents (including photographs, videos, sensor data, etc.) the better likelihood of success.
 - Use correct procedure and forms for consistency (change orders in writing, AIA forms, etc.)
 - Maintain organization to keep discovery costs low.
- Inspections, Tests, or Repairs: Consult with legal counsel first!
 - Performing any inspections, testing, or repairs of defective conditions could result in spoliation of evidence or at least another round of said inspections/testing.
 - Spoliation of evidence claim or defense can prevent the owner from using the defective conditions as evidence.



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Construction Phase Problems

- How long do you have to file a lawsuit?
- Who is included in the lawsuit?
- The role of experts.
- Alternative Dispute Resolution (ADR)
 - Arbitration or Mediation?
- Building repairs during the litigation.
- What are the recoverable damages?



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YOUR BOARD MAY WANT TO BORROW MONEY – NOW WHAT?

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Introduction



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2



Agenda

- Assembling Your Team
- Overview of Bond Issuance Process
- Post-Issuance Considerations



3

Assembling Your Team

- Upon identifying a need for additional funds to pay for capital improvements or other legally authorized purposes, a school district or unit of local government should assemble a team of professionals with diverse skills to efficiently meet and address those needs.
- For purposes of this discussion of the debt issuance process, the school district or unit of local government is the Issuer.



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Participants to a Bond Transaction



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Where to Start

- Municipal Advisor (“MA”)
 - Acts in fiduciary capacity
 - Assists in developing financial plan and transaction timeline, engaging other financing professionals, and credit rating process – if applicable
- Bond Counsel
 - Drafts bond resolution, agreements, and closing documents
 - Affirms issuer’s authorization to issue debt
- Local Counsel
 - Participates in each stage of debt issuance process
 - Provides continuity



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Additional Participants

- The following participants might be applicable to your transaction:
 - Underwriter
 - Disclosure Counsel
 - Underwriter’s Counsel
 - Rating Agency
 - Bond Registrar/Paying Agent
 - Escrow Agent



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Overview of Bond Issuance Process

- The steps that follow do not always occur in the order in which they are presented in these materials.
- Often, these determinations remain fluid and evolve as the deal participants address the needs and direction of the Issuer, as well as changes in the market.



Preliminary Steps

- Define the need for funds or motivation for issuing debt
 - Construction-related considerations
 - Debt service level
 - Long-term versus short-term borrowings
- Consider authority to proceed
- Determine method of sale and plan of finance
 - Direct placement versus public offering
 - If public offering, competitive sale versus negotiated sale
 - Consider whether to sell bonds all at once or in multiple series

Prepare Official Statement or Term Sheet

- Preliminary Official Statement (“POS”) and Official Statement (“OS”) are lengthy documents designed to disclose all material information
 - Consider: prospective investors rely upon POS/OS to make informed decisions regarding the creditworthiness of the Issuer and risk of the investment
- Term Sheet is similar in purpose, but less detailed
- Bond team assists in its preparation
 - Often, disclosure counsel is engaged to review adequacy of disclosures
- Multiple drafts should be circulated and reviewed
- **Issuer is responsible for its accuracy and completeness**
- Actively participate in review of POS/OS drafts and due diligence call(s)



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Obtain a Credit Rating

- Credit ratings for the bonds allow investors to evaluate credit quality and level of risk associated with purchasing the bonds
- Bonds are rated by Standard & Poor’s, Moody’s, and Fitch
- The higher the credit rating, the lower the interest cost
- Bond Insurance can be purchased to elevate the bond rating
- Rating agency will review POS and participate in a rating presentation
 - Main variables to be considered: management, local economy, financial position, and debt position
 - Municipal Advisor and Underwriter often facilitate preparation for and delivery of rating presentation



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Bond Closing Documents

- Bond counsel prepares majority of closing documents, including legal opinion letter
- Process requires Issuer to obtain additional documentation and certifications
- Closing documents are reviewed and supplemented by several deal participants, including Issuer's local counsel, municipal advisor, underwriter, underwriter's counsel, and Issuer's staff
- Closing documents will need to be executed by Issuer
 - Check for general availability of key representatives when your financing schedule is set; turn around time can be limited
- Several executed documents will need to be filed with applicable county clerks
- Closing Memorandum will include details to complete transfer and allocation of funds
 - For timely closing, be certain to initiate any transfer of funds required from the Issuer



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Post-Issuance Considerations

- An Issuer's responsibilities do not end once the bonds are closed.
- Issuers must remain cognizant of continuing disclosure requirements, authorized investments, anticipated expenditures and liquidity of bond proceeds, as well as arbitrage restrictions.



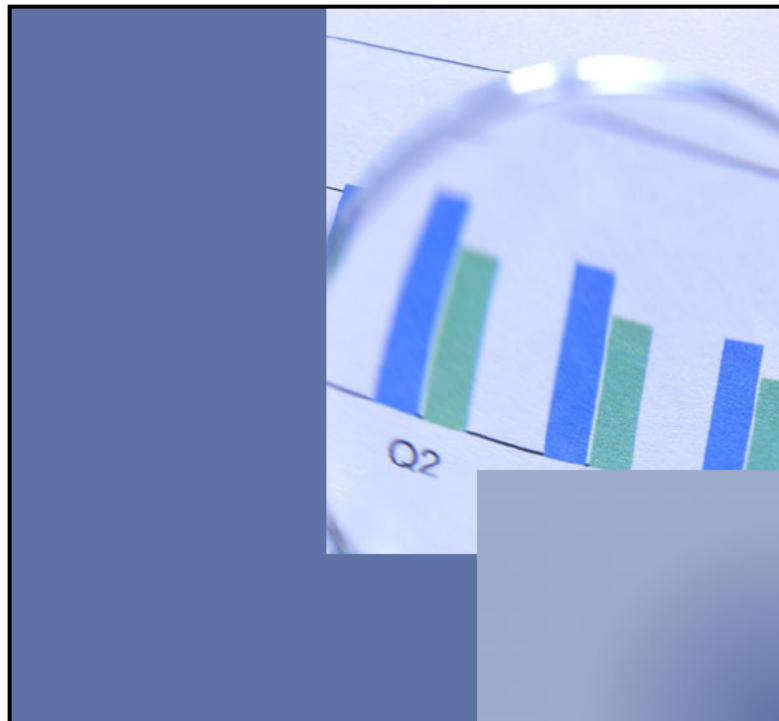
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Post Issuance Compliance – Continuing Disclosure

- Securities and Exchange Commission Rule 15c2-12 requires dealers who underwrite municipal securities to obtain certain information about the securities and the issuers and to ensure certain information is provided on an ongoing basis
 - Accomplished through a Continuing Disclosure Undertaking that is executed in package of closing documents
- Exemptions from SEC Rule 15c2-12
- Continuing disclosure information is provided through MSRB's Electronic Municipal Market Access ("EMMA")



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Post Issuance Compliance – Continuing Disclosure

- Required disclosures fall into three categories:
 - Financial Data or “Annual Financial Report”
 - Operating/Statistical Data or “Annual Financial Information”
 - Reportable Event Filing (within 10 business days of the occurrence of the event)



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Post Issuance Compliance – Continuing Disclosure

Enumerated reportable events pursuant to SEC Rule 15c2-12:

- Principal and interest payment delinquencies
- Non-payment related defaults
- Unscheduled draws on debt service reserves reflecting financial difficulties
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions or events affecting the tax-exempt status of the security
- Modifications to the rights of security holders
- Bond calls and tender offers
- Defeasances
- Release, substitution or sale of property securing repayment of the securities
- Rating changes *
- Bankruptcy, insolvency or receivership
- Merger, acquisition or sale of all issuer assets
- Appointment of successor trustee
- Financial obligation incurrence or agreement *
- Default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties



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Post Issuance Compliance – Continuing Disclosure

- Dissemination Agent
 - View this relationship as support, not complete delegation
 - Communication of potential reportable events is critical



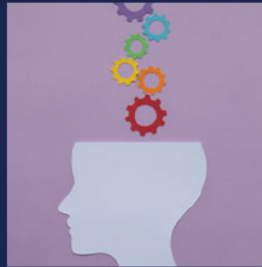
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Spending and Investing Bond Proceeds

- Collaborate with professionals involved in construction project(s) for anticipated spenddown schedule
- Investment schedule and investment vehicles should also be consistent with Issuer's Policies, as well as federal and State law
- Consider arbitrage restrictions given current market
 - Issuers can work with additional professionals to invest bond proceeds and monitor their investments for compliance with arbitrage restrictions



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Summary

- Assemble your finance team to incorporate their distinct insights into the debt issuance plan early.
- Review documents prepared by financing team.
- Make sure you understand your post-issuance obligations at the time of issuing debt.
- Review your policies and procedures for compliance with recordkeeping and continuing disclosure requirements.
- Ask questions.



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TOP 10 CONSIDERATIONS FOR REAL ESTATE: STRATEGIES TO PROTECT YOUR PROPERTY RIGHTS AND ENSURE SMOOTH TRANSACTION

April 11, 2024

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Introduction



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2

Agenda

- **Introductions and Overview**
- **Top 10 Considerations for Your Real Estate Transaction**
 - **Community Engagement, Planning and the Open Meetings Act**
 - **Acquiring Property as a Public Body**
 - **Brokers and Agents**
 - **Zoning**
 - **Purchase and Sales Agreement**
 - **Due Diligence**
 - **ALTA Surveys**
 - **Build Out and Construction**
 - **Leasing**
 - **Closing**
- **Questions & Answers**



3

Community Engagement, Planning and the Open Meetings Act

- Open Meetings Act permits discussion in closed session for:

The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.



4

Acquiring Property as a Public Body: Statutory Considerations

- Enabling Statutes
 - Authority to acquire or purchase real property established by enabling statutes
 - These same statutes may also limit Board authority to acquire or purchase real property in certain circumstances
 - For example, school districts are authorized to purchase “sites for buildings for school purposes,” but how such purchases can depend on specific statutory authority.
 - Section 10-22.31b of the Illinois School Code establishes procedures for purchasing sites and buildings needed for area vocational education buildings
 - Section 10-22.35A of the Illinois School Code allows for the purchase of sites and facilities for school offices and authorizes the taking of such sites through condemnation proceedings
 - Section 10-22.36 of the Illinois School Code allows for the purchase of a building for school classroom or instructional purposes by referendum only

5

Acquiring Property as a Public Body: Local Government Property Transfer Act

- Municipalities may acquire and hold real and personal property “for corporate purposes”
- For purposes of the Act, “municipalities” include:

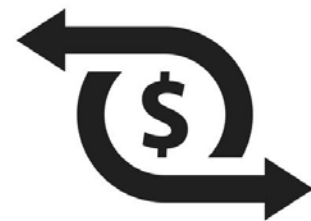
“any municipal corporation or political subdivision organized and existing under the laws of the State of Illinois and including, but without limitation, **any city, village, or incorporated town**, whether organized under a special charter or under the General Act, or whether operating under the commission or managerial form of government, county, **school districts, trustees of schools, boards of education, 2 or more school districts operating a cooperative or joint educational program pursuant to Section 10-22.31 of the School Code, sanitary district or sanitary district trustees, forest preserve district or forest preserve district commissioner, park district or park commissioners, airport authority and township.**” 50 ILCS 605/1



6

Acquiring Property as a Public Body: Local Government Property Transfer Act

- Allows for the transfer of real estate between public bodies (i.e., municipalities) “in the making of any public improvement or for any public purpose”
- Establishes procedures to effect a transfer
- Procedures depend on whether the real estate is held by the transferring municipality without restrictions or with restrictions
- Real estate held without restriction can be transferred upon a resolution by two-thirds (2/3) vote of the members of the transferor
- Real estate held with restriction require agreement of the party benefiting from such restriction (i.e., release of the restriction)
- If a release cannot be obtained, either public body may file a petition in a circuit court for a judicial determination that the restriction should be removed and released with appropriate compensation
- Similar procedures are used to secure the release of easements



7

Acquiring Property as a Public Body: Local Government Property Transfer Act

- When interpreting the authority of municipalities under the Act and public purpose of the transact, courts will look to the following factors:
 - the acquisition must benefit the community rather than only an individual;
 - the law must control the use of the property
 - the title to the property must not be vested in a person or corporation as private property to be used and controlled as private property
 - the public must reap the benefit of public possession and use and no one may exercise control over the property except for the municipality
 - "all persons must have an equal right to use the property and that right must be on the same terms as all other persons"

Times Mirror Cable Television of Springfield, Inc v First Nat'l Bank of Springfield, 221 Ill App 3d 340, 583 NE2d 216, 164 Ill Dec 8 (4th D 1991).



8

Acquiring Property as a Public Body: Eminent Domain and Condemnation

- Eminent Domain Act
 - Allows for the taking of public property for public purpose in accordance with certain procedures and for "just compensation"
 - Allows units of local government, school districts, or other entity "authorized to exercise the power of eminent domain" to act as a condemning authority
 - Enabling ordinances or resolutions authorizing the use of eminent domain for a particular public purpose
 - Notice, negotiation and condemnation proceedings generally required



9

Brokers and Agents: Retention and Role

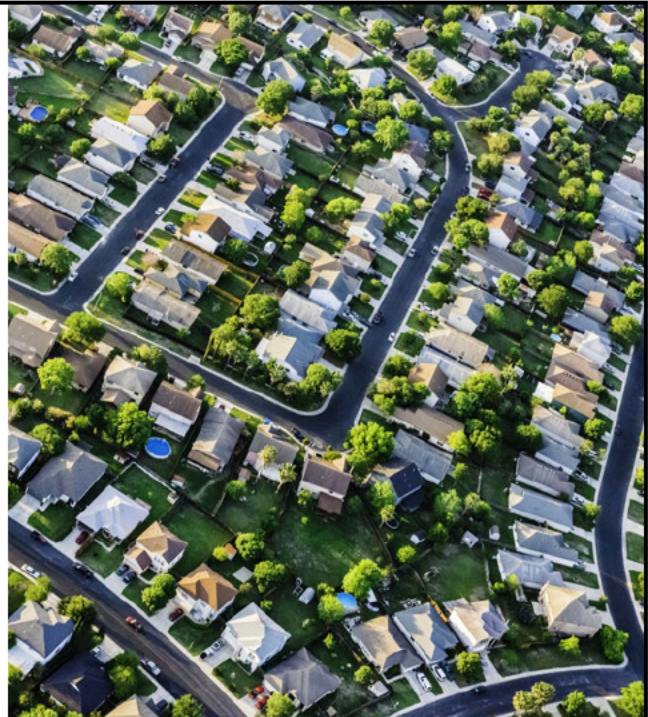
- Most competitive bidding requirements do not apply to a local body's decision to retain a broker or agent to assist in a real estate transaction
- Brokers can offer expertise in understanding the current conditions of a real estate market
- Brokers must be professionally licensed and carry a legal duty to parties they represent
- Brokers can be particularly helpful in sharing knowledge of local zoning requirements and other local ordinances



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Zoning Considerations

- Zoning issues arise as a result of local ordinance relating to permitted use of land
- Nonconforming uses occur when a property owner (including a purchaser) intends to use property in a way that is not permitted by current zoning regulations
- Certain uses may be allowed by special use permits or variances, but certain procedural requirements may need to be satisfied or allow third parties to influence transactions
- Zoning issues should be addressed before entering into a Purchase and Sale Agreement and during the due diligence period



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Purchase and Sale Agreements

- Agreements negotiated between sellers and purchasers that address critical aspects of the transaction *before* either party reaches a “point of no return”
- Critical aspects to address include:
 - Escrow and Earnest Money
 - Due Diligence
 - Disclosures and Records
 - Taxes
 - Contingencies
 - Surveys, access and inspections
 - Delivery, acceptance and default
 - Title
 - Personal property



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Due Diligence

- Property inspection and environmental considerations
- Title and Ownership
- Surveys and Encumbrances
- Leases
- Property taxes
- Utilities and services
- Deferred maintenance



13

ALTA Surveys

- Based on standards of American Land Title Association, which provide a basis for insuring title to real estate
- Plat contains standard disclosures regarding:
 - Current recorded descriptions
 - Surveyed boundaries
 - Notations and disclosures relating to discrepancies in property descriptions
 - Easements, buildings, and rights-of-way



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Optional ALTA Survey Specifications

- Table A vs. Table B Specifications
 - Table A –
 - Flood zone
 - Grass land area
 - Exterior dimensions of buildings (including square footage)
 - Table B –
 - Set back requirements
 - Additional detail



15

Considerations for Build Out and Construction

- Existing and future leases
- Common areas and “CAM” expenses
- Shared purpose and/or needs
- Use of funds and required procedures, disclosures, etc.




16

Leases: Key Considerations for Lessors and Lessees

- What are the basic terms?
 - Base rent, CAM expenses, term of lease, leased premises, common areas
- Construction and buildout, improvements, and maintenance
- Parties' obligations and definition of default or breach
- Utilities and other expenditures
- Signage and exterior marketing
- Liability




17



Considerations for Closing

- Completion of due diligence
- What are the closing documents?
 - Deed, affidavit of title, etc.
- Closing statements
 - Who pays for what?
- Estoppel certificates
- Access and ongoing occupancy



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QUESTION & ANSWER



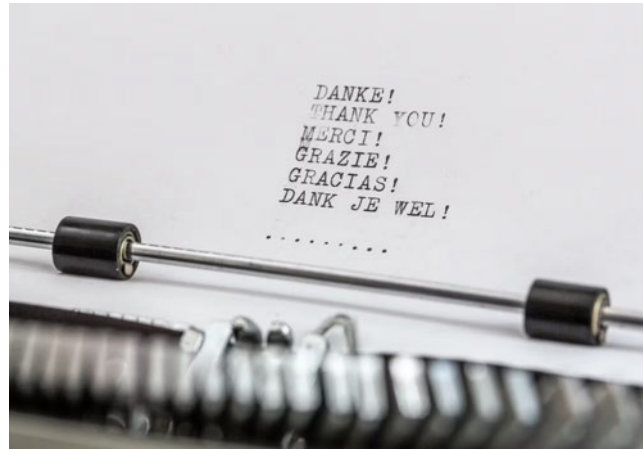
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Biographies

KATIE DIPIERO

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Katie N. DiPiero is a versatile attorney who brings her expertise to Robbins Schwartz in the areas of public finance and taxation, commercial law, construction law, and real estate development. Her legal practice primarily centers around assisting and representing school districts, community colleges, and municipalities in public finance and commercial matters. She is also well-versed in tax rate objections, real property taxation, valuation, and assessment appeals before the circuit court, Property Tax Appeal Board, and boards of review. Furthermore, Katie's proficiency extends to drafting and negotiating contracts in commercial transactions, assisting with nonprofits and foundations, as well as handling litigation and alternative dispute resolution.

In her role as an attorney, Katie finds immense satisfaction in writing and negotiating contracts, as well as tackling finance-related issues. Her strengths as a legal professional are exemplified through her exceptional writing and research skills, which have proven invaluable in her career.

Before her role at Robbins Schwartz, Katie assisted clients in tax planning and corporate reorganizations. She also gained valuable experience working for government entities and non-profit organizations.

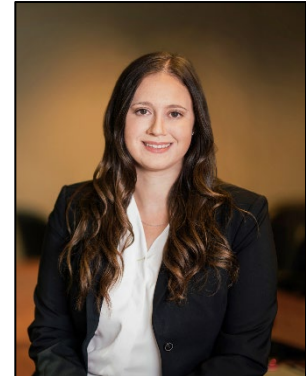
Katie's impressive educational background led her to realize her calling – to assist others in navigating the legal system, particularly those with limited exposure to complex legal processes. Her desire to help people and her love for writing were the driving forces behind her decision to become a lawyer.

Katie's background, characterized by a journey from Kansas to Seattle, followed by work in Washington, D.C., has molded her into a well-rounded and empathetic attorney. Her ability to understand different perspectives, influenced by the myriad of experiences from her travels, significantly contributes to her capacity for finding creative solutions in her legal practice.

Outside her professional life, Katie is dedicated to staying active with her family and is working on refining her golf skills through lessons. An interesting facet of her life that many may not know is her background as a competitive pianist during her childhood.

RECENT PUBLICATIONS

Contributing author, "Environmental Issues" *Construction Law: Transactional Considerations*, IICLE (2021)



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Brittany Flaherty Theis focuses her practice on the representation of school districts and other taxing bodies in property tax disputes and regarding such topics as board governance, Freedom of Information Act requests, Open Meetings Act requirements, administrative law and procedure, personnel and employment matters, intergovernmental agreements, land acquisition and disposition, special education, media, bond issuances, business operations, risk management, and school finance. Ms. Theis actively monitors legislation and other legal developments impacting school districts throughout Illinois.

She regularly advises on issues impacting the valuation of property throughout Illinois and has participated in the representation of public bodies before circuit courts, mediators, county boards of review, the Illinois Pollution Control Board, Illinois Department of Revenue, Illinois Property Tax Appeal Board, and Illinois Appellate Court. Ms. Theis' work includes the preparation of pleadings, memoranda, and briefs, as well as arguments, in cases before those tribunals. She has also presented at seminars to school district administrators and assessment officials throughout Illinois on this topic.

Ms. Theis participated in the mediation of a billion-dollar property tax assessment dispute, representing numerous public bodies. She has assisted in successfully litigating and negotiating both short- and long-term settlement agreements regarding the assessment and taxation of numerous properties, including nuclear power plants, oil refineries, pollution control facilities, and other high value commercial and industrial properties. In related litigation, Ms. Theis served on the team that successfully defended, on appeal in the Fourth District, a trial court's findings of several violations of the Freedom of Information Act and the Open Meetings Act by a State agency. As a part of that team, in the Illinois Supreme Court, she also challenged the Pollution Control Board's refusal to allow taxing bodies to intervene in pollution control facility certification proceedings in which property owners seek preferential tax treatment.

In addition to property tax litigation, Ms. Theis regularly advises clients in matters regarding school finance including property tax levies, interfund transfers, borrowing, and contract preparation and review. She serves as local counsel and disclosure counsel on bond financings – assisting school district clients from the early planning stages through closing and post-issuance matters. She actively presents on these topics throughout Illinois to both small and large groups of administrators.

Ms. Theis also advises clients on personnel matters, including contract preparation and review, disciplinary matters, and state and federal accommodation laws. Her experience and interests also include student matters such as student rights and responsibilities and special education.



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Municipal Law
Public Finance & Taxation
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American Bar Association

Illinois State Bar
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Ms. Theis serves as a hearing officer in student disciplinary hearings. These interests flow naturally into her passion for navigating policy matters on behalf of school district clients. Recent policy questions that continue to evolve include accommodations involving students who are transgender, constitutional questions, issues of school safety, and internet safety and social media.

In 2022, Ms. Theis was named as an “Emerging Lawyer” in the areas of School Law; Real Estate Law: Tax; and Government, Municipal, Lobbying & Administrative Law by Law Bulletin Media’s “Leading Lawyers” division. Attorneys selected for this honor are recognized as being leaders in the legal profession.

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Ken Florey concentrates his practice representing public and private clients, including municipalities, school districts, community colleges, townships, libraries, private owners, contractors and design professionals regarding land use, municipal law, construction, tax, finance and litigation. Ken has also started offering his services as a mediator with an emphasis on construction disputes.

Ken was the Chair of the DuPage County Bar Association's Local Government Committee. He was appointed Special Assistant Attorney General to prosecute and defend construction litigation claims on behalf of the Illinois Capital Development Board. Ken is also a member of the Illinois ASBO Service Associate Advisory Committee. He served as a Trustee for the Village of Lombard for eight years and is a member of the Lombard Fire and Police Commission.

MEDIATOR CERTIFICATE: Northwestern University 2017

AWARDS

Illinois Leading Lawyer, Construction Law; Governmental, Municipal, Lobbying & Administrative Law; Land Use, Zoning & Condemnation Law; and School Law

Illinois Association of School Business Officials, Above and Beyond Award

Illinois Institute for Local Government Law, Litigation Award

RECENT PUBLICATIONS

Contributing author, "Navigating Construction Disputes: *The inevitable construction disputes can be navigated with a combination of knowledge, preparation, and outside guidance,*" School Business Affairs (November 2023)

Contributing author, "Diving into ADR Ethics: Exploring the Ethical Obligation of Attorneys as Advisors, Advocates, and Third-Party Neutrals," DCBA Brief (November 2023)

Contributing author, "Joint Purchasing Everything You Want to Know but Are Afraid to Ask!" *UPDATE Magazine*, Illinois ASBO (2019)

Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions & Solutions" *UPDATE Magazine*, Illinois ASBO (2018)



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Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)

Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"Construction Project and Contract Pitfalls" *UPDATE Magazine*, Illinois ASBO (2017)

"The Good, the Bad and the Ugly of School Bidding Requirements," *UPDATE Magazine*, Illinois ASBO (2016)

"Settlement Crumbles; Appeals Court Declines to Put Pieces Back Together," *Chicago Daily Law Bulletin* (2015)

RECENT PRESENTATIONS

Alternative Dispute Resolution Section MCLE Program, DuPage County Bar Association (February 2023)

Cooperative Purchasing: Are We Doing it Right?, Illinois Association of School Personnel Administrators and Illinois Association of School Business Officials Regional Conference (October 2022)

Building a Construction Team and So Much More to Achieve Success with Your Project, Association of School Business Officials International (August 2022)

Ethics and ADR: Meditation and Arbitration Issues, DCBA (June 2022)

Cooperative Purchasing: Are You Doing it Right?, Illinois ASBO Annual Conference (June 2022)

Bidding Processes & Procedures: Best Practices in a Changing Environment, Illinois ASBO Annual Conference (May 2022)

Contracts and Conflicts: How Did We Get Here & Where are We Going?, Illinois ASBO Annual Conference (May 2022)

Wrapping Up the Year End in the Business Office: Do's and Don'ts, Illinois ASBO School Business Essentials (April 2022)

School Construction and Purchasing Scenarios: Common Problems with Practical Solutions, ASBO International and AC&E (October 2021)



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Matt Gardner is a partner at Robbins Schwartz where he is a member of the firm's construction, commercial transactions, real estate, and public finance practice groups. Matt represents private and public project owners over the course of construction and development projects, beginning with property acquisition, zoning, contract negotiation and bidding, project management, surety and warranty claims, and any resulting litigation concerning payment, delays or design or construction defects. Matt also represents contractors, subcontractors and material suppliers on a variety of construction-related matters, including payment claims, preserving and enforcing lien rights, and defending defect claims.

In addition to his construction and real estate practice, Matt represents school districts, colleges, and educational technology companies in matters relating to student records and data privacy. Matt regularly drafts and negotiates data privacy agreements, software license agreements, and other service agreements that comply with applicable federal and state privacy laws and regulations while simultaneously protecting his clients' interests. He was part of a team of Robbins Schwartz attorneys that drafted the Illinois addendum to the National Data Privacy Agreement and frequently advises clients on the evolving legal landscape for education privacy matters and risks associated with data breaches or ransomware attacks. Matt has worked with educational technology clients to successfully complete responses and bid submissions as part of the procurement process for some of the largest school districts in the nation resulting in significant contracts. He also works with education technology clients to prepare subcontracts, policies, and procedures to address data security and compliance with the multitude of state and federal data privacy laws.

Matt is the past Chair of the Chicago Bar Association Construction Law and Mechanics Lien Subcommittee (2018-19), has testified before the General Assembly on construction-related matters, and is a member of the Illinois State Bar Association and Chicago Bar Association Judicial Evaluation Committee. Matt has also performed pro bono services representing clients through Chicago Volunteer Legal Services and Franciscan Outreach.

AWARDS

Illinois "Rising Star", by Super Lawyers Magazine, in the area of Construction Litigation (2021-2022)

RECENT PUBLICATIONS

Contributing author, "Environmental Issues" *Construction Law: Transactional Considerations*, IICLE (2021)



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Contributing author, "School Property and Environmental Issues" *School Law: Organization, Finance, and Property*, IICLE (2017, 2021)

Contributing author, "Turner on Illinois Mechanics Liens," *Chapter III – Making a Lien Against Private Property Enforceable* (2019)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Top 11 Public Bidding Questions," *UPDATE Magazine*, Illinois ASBO (2018)

Contributing author, "Meditation a Win-Win for Clients and their Attorneys in Construction Litigation," *Chicago Daily Law Bulletin* (2018)

RECENT PRESENTATIONS

Data Breaches and Ransomware Attacks: Strategies for Preventing and Responding to Cybersecurity Incident, Large Unit District Association 2024 March Conference (March 2024)

Legal Requirements Schools Must Consider for Data Privacy and an Update on the Evolution of Lawsuits Against Schools Arising From Data Breaches, Secured Schools: K-12 Data Privacy and Cybersecurity Conference (January 2024)

Legal Update for Illinois Community College Chief Financial Officers, Illinois Community College Chief Financial Officers Spring Conference (April 2023)

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

Bidding 101, IASBO Emerging SBO Summit (July 2022)

Legal Considerations Related to Renewable Energy, Illinois ASBO Administrator Academy: Sustainability for PK-12 Schools (May 2022)

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA, and PIPA and Strategies for Compliance, Secured Schools K-12 Data Privacy and Cybersecurity Conference (January 2022)



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Christopher R. Gorman practices in the firm's commercial, construction, and real estate practice groups, representing public sector clients in commercial transactions, contracting, construction related transactional matters, and data & privacy law. Christopher has also served in the firm's labor and employment practice group and counseled employers in all aspects of labor and employment law, including labor relations, collective bargaining, grievance and dispute resolution, workplace investigation, employee discipline, terminations and reductions in force, and employment discrimination. Christopher also advises clients on board governance and compliance with the Illinois Freedom of Information Act and Open Meetings Act.

Christopher's strengths as an attorney are evident in his approach to law. He brings a unique perspective to the table, given his background as in-house counsel for not-for-profit organizations and public bodies as well as his comprehensive understanding of various practice areas. He values ethical principles and understands the significance of alternative dispute resolution when it aligns with his clients' best interests.

In his legal practice, Christopher finds the most joy in representing individuals who are deeply committed to their roles in public service, recognizing the significance of their contributions. This alignment of values and a shared commitment to public service underscores the core of his legal practice.

Christopher's decision to become a lawyer was deeply rooted in his passion for government and public service. Prior to joining Robbins Schwartz, Christopher served as in-house counsel for a nonprofit organization, a charter school management organization and a state regulatory agency overseeing higher education financing. In his career, Christopher has overseen labor relations for the first unionized charter school in the country, assisted in the development of state legislation and administrative rules, and influenced the U.S. and Treasury Department's decision to reintroduce the U.S. Savings Bond as a form of tax refund, promoting savings among low-income families.

Christopher's contributions extend beyond the courtroom. He has authored numerous publications, addressing critical legal issues and serving as a valuable resource for the legal community. He has also been a prominent figure in legal presentations, sharing his insights with fellow professionals.



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J.D., University of
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B.A., University of
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Dupage County Bar
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Illinois Local Government
Lawyers Association

Illinois Association of
School Business Officials

Beyond his legal career, Christopher is a devoted coach for his children's sports activities when given the opportunity. He finds solace in the great outdoors, enjoys cooking, and maintains a commitment to regular exercise. Moreover, he possesses a deep interest in change management and organizational design, which he's cultivated through certification courses.

RECENT PUBLICATIONS

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations 2021 Edition*, IICLE (2021)

"Continuing Controversy Over FCC's Efforts to Improve Broadband Connectivity," *Energy, Utilities, Telecommunications and Transportation Newsletter*, Illinois State Bar Association (2021)

"The Future of For-Profit Online Charter Schools," *Labor and Employment Law Quarterly*, American Bar Association (2016)

RECENT PRESENTATIONS

Contributing author, "Diving into ARC Ethics: Exploring the Ethical Obligation of Attorneys as Advisors, Advocates, and Third-Party Neutrals," DCBA Brief (November 2023)

Best Practices for Safeguarding Data in an Increasingly Digital World, SecurED Schools: K-12 Data Privacy and Cybersecurity Conference (January 2023)

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Making Sense of the Alphabet Soup: FERPA, COPPA, SOPPA, ISSRA, MHDDCA and PIPA, The Learning Technology Center of Illinois SecurED Schools Annual Conference (January 2022)



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Nicole Karas focuses her practice on local government and corporate law. She serves as outside general counsel to local governmental clients providing a wide range of legal assistance. Nicole counsels clients on major construction, land acquisition, contract drafting and negotiation, intergovernmental cooperation agreements, board policies, personnel policies, employment issues, contracts for purchases of goods and services, Open Meetings Act, FOIA issues, and ordinance/resolution drafting.

Nicole represents corporate and non-for-profit clients in various matters, including entity formation, real estate matters, contract review, leases and other transactional matters.

RECENT PUBLICATIONS

"Guide to the Open Meetings Act and FOIA," *Illinois Association of Park Districts* (2023)

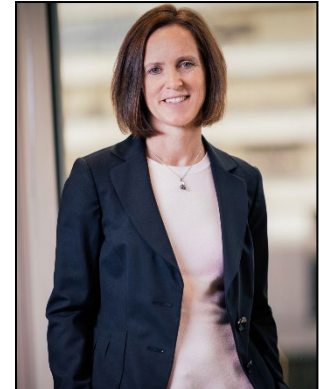
"Buyer Beware – Construction Project and Contract Pitfalls," *Illinois Association of School Business Officials Magazine* (2017)

RECENT PRESENTATIONS

Bidding 101: Bidding Requirements, Exceptions and Strategies for Cooperative Purchase, IAPD/IPRA Soaring to New Heights Conference (January 2023)

Managing a Successful Construction Project, IAPD/IPRA Soaring to New Heights Conference (January 2023)

Bidding, Construction and Contract Administration, IAPD/IPRA Soaring to New Heights Conference (January 2022)



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Howard Metz counsels and represents school districts, community colleges, park districts and municipalities with respect to real estate, commercial transactions, construction law and land use and zoning matters. He has resolved construction cases involving issues such as disputed architectural fees, construction defects, bidding disputes and construction delays. Howard has also litigated issues involving zoning laws and municipal control over school property.

RECENT PUBLICATIONS

Contributing author, "Joint Purchasing Everything You Want to Know but Are Afraid to Ask!" *UPDATE Magazine*, Illinois ASBO (2019)

Contributing author, "Public Body Social Media Rules Make Retention, Ready Retrieval Imperative," *Chicago Daily Law Bulletin* (2019)

Contributing author, "How Far Does the Law Allow Schools to Go?" *UPDATE Magazine*, Illinois ASBO (2018)

Co-author, "School Construction from Start to Finish: A Project Checklist," *School Business Affairs Magazine*, ASBO (2018)

Contributing author, "Organization, Finance, and Property," *Illinois School Law*, IICLE (2017)

"Look Before You Leap: Evaluating Your Joint Purchasing Options," *UPDATE Magazine*, Illinois ASBO (2016)

Contributing author, "School Property and Environmental Issues," *Illinois School Law*, IICLE (2010 and 2012)

RECENT PRESENTATIONS

School Bidding, Procurement, and Prevailing Wages: From the Basics to the Advanced, IASA Spring Legal Seminar (March 2022)

Legal considerations related to renewable energy, Illinois ASBO Administrator Academy: Sustainability for PK-12 Schools (November 2021)



PRACTICE AREAS

Commercial Transactions
Construction Law
Education Law
Finance
Municipal Law
Real Estate Development

EDUCATION

J.D., IIT Chicago-Kent
College of Law

B.S., University of Iowa

ADMITTED TO PRACTICE

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois