



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1875

Introduced 2/10/2011, by Sen. A. J. Wilhelmi

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Responsible Bidder in Service Contracts Act. Provides certain criteria for "lowest responsible bidder". Provides that a bidder who, within a 3-year period, has twice violated the prevailing wage provisions of the Illinois Procurement Code shall be deemed not to be a responsible bidder for 4 years. Provides that a bidder shall remain neutral in any union organizing campaign. Provides that when an award is not recommended to be given to the lowest bidder, the purchasing agent shall prepare a statement of the reasons for the recommendation. Provides that when 2 or more responsible bidders submit the same low bid, the contract award shall be determined by drawing lots. Provides for a private right of action. Effective immediately.

LRB097 06160 PJG 46234 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Responsible Bidder in Service Contracts Act.

6 Section 5. Purpose. The State expends substantial  
7 municipal funds for public services. A large portion of that  
8 money derives from taxes paid by Illinois residents. It is  
9 therefore in the public interest, health, welfare, and safety  
10 to let all public service contracts of \$2,000 or more or \$200  
11 or more per month to the lowest responsive and responsible  
12 bidder.

13 Section 10. Definition. For purposes of this Act the terms  
14 "work" and "labor" mean the same as "services" as defined in  
15 Section 25-60 of the Illinois Procurement Code.

16 Section 15. Criteria. "Lowest responsible bidder" is a  
17 bidder who meets all of the following applicable criteria and  
18 submits evidence of that compliance:

19 (a) Compliance with all applicable laws prerequisite  
20 to doing business in Illinois.

21 (b) Compliance with:

1 (1) Federal employer tax identification number or,  
2 for sole proprietors, social security number  
3 requirements.

4 (2) Provisions of the Equal Employment Opportunity  
5 Act of 1972 (42 U.S.C. 2000e through 2000e-17) and  
6 Federal Executive Order No. 11246 as amended by Federal  
7 Executive Order No. 11375.

8 (c) Certificates of insurance indicating the following  
9 coverage as necessary for the contract and in amounts  
10 specified in the bid specifications:

11 (1) General liability.

12 (2) Worker's compensation.

13 (3) Hazardous occupation.

14 (4) Product liability.

15 (5) Professional liability.

16 (d) Proof of performance bond, which in no event shall  
17 provide coverage for less than 20% of the total cost of the  
18 contract to be awarded.

19 (e) Compliance with Section 25-60 of the Illinois  
20 Procurement Code, including wages and fringe benefits for  
21 those classifications of services covered in the Code.

22 (f) All labor shall be covered by an approved health  
23 and hospital plan and an approved pension plan. A statement  
24 of employee benefits must be completed and made part of the  
25 bid in order for the bid to be accepted.

26 (g) Proof of any professional or trade license required

1           by law for any trade or specialty area in which the bidder  
2           is seeking a contract award. Additionally, the bidder must  
3           disclose any suspension or revocation of such a license  
4           held by the company, or of any director, officer, or  
5           manager employed by the bidder.

6           Failure to produce these items within 5 business days after  
7           the date of written request by the State shall result in the  
8           bidder's disqualification.

9           Section 20. Employee misclassification. A contractor must  
10          swear under oath that employees on the project are properly  
11          classified pursuant to the federal tax code and as clarified in  
12          current IRS regulations.

13          Section 25. Prevailing wage requirements.

14          (a) A bidder who has been found to be in violation of the  
15          prevailing wage provisions of the Illinois Procurement Code  
16          twice within a 3-year period shall be deemed not to be a  
17          responsible bidder for 4 years after the date of the latest  
18          finding.

19          (b) A bidder must file with the State a signed statement  
20          that the bidder has reviewed the prevailing wage provisions of  
21          the Illinois Procurement Code, that the bidder has reviewed and  
22          agrees to pay the applicable prevailing wage rate as set forth  
23          in the wage rate schedule attached to the bid specifications,  
24          and that the bidder will strictly comply with Section 25-60 of

1 the Illinois Procurement Code.

2 Section 30. Union neutrality. A bidder or contractor shall  
3 remain neutral in any union organizing campaign and shall not  
4 use public funds to influence the decision of its employees to  
5 join or not join the union of their choice.

6 Section 35. Additional criteria available. If the criteria  
7 set forth in Section 15 are otherwise satisfied, the State may  
8 also consider the following factors, in its discretion, in  
9 awarding the project if that information is requested:

10 (a) Statements as to past performance, which shall give  
11 an accurate and complete record of all work completed in  
12 the past 3 years by the contractor. The bidder shall give  
13 the names and addresses of the projects, original contract  
14 price, final contract price, and the names of all  
15 subcontractors used, if applicable, and a statement as to  
16 compliance with awarded contracts.

17 (b) Any determinations relating to violations of  
18 federal, state, or local laws including but not limited to  
19 violations of OSHA, the National Labor Relations Act, or  
20 the McNamara Service Contract Act.

21 Section 40. Debarment. For any second or subsequent  
22 violation of these provisions by an employer or entity, as  
23 determined by the Department of Central Management Services

1 (CMS), which is within 3 years of an earlier violation by the  
2 employer or entity, CMS shall add the name of the employer or  
3 entity to a list to be posted on CMS's official website. Upon  
4 posting the name of the employer or entity, CMS shall notify  
5 the violating employer or entity. No state contract shall be  
6 awarded to an employer or entity appearing on the list until 4  
7 years have elapsed from the date of its last violation.

8 Section 45. Lowest bidder not chosen. When the award is not  
9 recommended to be given to the lowest responsible bidder, a  
10 statement of the reasons for that award recommendation shall be  
11 prepared by the purchasing agent.

12 Section 50. Multiple low bids. When 2 or more responsible  
13 bidders submit the same low bid, the contract award shall be  
14 determined by drawing lots in the presence of the responsible  
15 bidders involved. However, if one bidder is a local bidder and  
16 one is a non-local bidder, then the local bidder shall be  
17 awarded the contract.

18 Section 55. Private right of action.

19 (a) An interested party or person aggrieved by a violation  
20 of this Act or any rule adopted under this Act by an employer  
21 or entity may file suit in circuit court in the county where  
22 the alleged offense occurred or where any person who is party  
23 to the action resides, without regard to exhaustion of any

1 alternative administrative remedies provided in this Act.  
2 Actions may be brought by one or more persons for and on behalf  
3 of themselves and other persons similarly situated. A person  
4 whose rights have been violated under this Act by an employer  
5 or entity is entitled to collect:

6 (1) the amount of any wages, salary, or employment;

7 (2) compensatory damages and an amount up to \$500 for  
8 each violation of this Act or any rule adopted under this  
9 Act;

10 (3) in the case of unlawful retaliation, all legal or  
11 equitable relief as may be appropriate; and

12 (4) attorney's fees and costs.

13 (b) The right of an interested party or aggrieved person to  
14 bring an action under this Section terminates 3 years after the  
15 final date the party performed services for the employer or  
16 entity. This limitations period is tolled if an employer or  
17 entity has deterred a person's exercise of rights under this  
18 Act.

19 Section 60. Materiality. The requirements of this Act are a  
20 material part of the contract, and the successful bidder shall  
21 incorporate those requirements into all subcontracts.

22 Section 97. Severability. The provisions of this Act are  
23 severable under Section 1.31 of the Statute on Statutes.

24 Section 99. Effective date. This Act takes effect upon

1 becoming law.