

HB3232



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3232

by Rep. Jehan A. Gordon-Booth

SYNOPSIS AS INTRODUCED:

105 ILCS 5/10-20.21

Amends the School Code. Exempts contracts awarded to a local contractor who is not the lowest responsible bidder, but who is a qualified bidder who has submitted a bid that does not exceed 2% over the lowest responsible bid received by the school board, from the requirement that a school board award all contracts for the purchase of supplies and materials or work involving an expenditure in excess of \$25,000 to the lowest responsible bidder. Effective immediately.

LRB098 07648 NHT 37720 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning education.

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

4 Section 5. The School Code is amended by changing Section
5 10-20.21 as follows:

6 (105 ILCS 5/10-20.21)

7 Sec. 10-20.21. Contracts.

8 (a) To award all contracts for purchase of supplies and
9 materials or work involving an expenditure in excess of \$25,000
10 or a lower amount as required by board policy to the lowest
11 responsible bidder, considering conformity with
12 specifications, terms of delivery, quality and serviceability,
13 after due advertisement, except the following: (i) contracts
14 for the services of individuals possessing a high degree of
15 professional skill where the ability or fitness of the
16 individual plays an important part; (ii) contracts for the
17 printing of finance committee reports and departmental
18 reports; (iii) contracts for the printing or engraving of
19 bonds, tax warrants and other evidences of indebtedness; (iv)
20 contracts for the purchase of perishable foods and perishable
21 beverages; (v) contracts for materials and work which have been
22 awarded to the lowest responsible bidder after due
23 advertisement, but due to unforeseen revisions, not the fault

1 of the contractor for materials and work, must be revised
2 causing expenditures not in excess of 10% of the contract
3 price; (vi) contracts for the maintenance or servicing of, or
4 provision of repair parts for, equipment which are made with
5 the manufacturer or authorized service agent of that equipment
6 where the provision of parts, maintenance, or servicing can
7 best be performed by the manufacturer or authorized service
8 agent; (vii) purchases and contracts for the use, purchase,
9 delivery, movement, or installation of data processing
10 equipment, software, or services and telecommunications and
11 interconnect equipment, software, and services; (viii)
12 contracts for duplicating machines and supplies; (ix)
13 contracts for the purchase of natural gas when the cost is less
14 than that offered by a public utility; (x) purchases of
15 equipment previously owned by some entity other than the
16 district itself; (xi) contracts for repair, maintenance,
17 remodeling, renovation, or construction, or a single project
18 involving an expenditure not to exceed \$50,000 and not
19 involving a change or increase in the size, type, or extent of
20 an existing facility; (xii) contracts for goods or services
21 procured from another governmental agency; (xiii) contracts
22 for goods or services which are economically procurable from
23 only one source, such as for the purchase of magazines, books,
24 periodicals, pamphlets and reports, and for utility services
25 such as water, light, heat, telephone or telegraph; (xiv) where
26 funds are expended in an emergency and such emergency

1 expenditure is approved by 3/4 of the members of the board;
2 (xv) State master contracts authorized under Article 28A of
3 this Code; ~~and~~ (xvi) contracts providing for the transportation
4 of pupils, which contracts must be advertised in the same
5 manner as competitive bids and awarded by first considering the
6 bidder or bidders most able to provide safety and comfort for
7 the pupils, stability of service, and any other factors set
8 forth in the request for proposal regarding quality of service,
9 and then price; and (xvii) contracts awarded to a local
10 contractor who is not the lowest responsible bidder, but who is
11 a qualified bidder who has submitted a bid that does not exceed
12 2% over the lowest responsible bid received by the board.
13 However, at no time shall a cause of action lie against a
14 school board for awarding a pupil transportation contract per
15 the standards set forth in this subsection (a) unless the cause
16 of action is based on fraudulent conduct.

17 All competitive bids for contracts involving an
18 expenditure in excess of \$25,000 or a lower amount as required
19 by board policy must be sealed by the bidder and must be opened
20 by a member or employee of the school board at a public bid
21 opening at which the contents of the bids must be announced.
22 Each bidder must receive at least 3 days' notice of the time
23 and place of the bid opening. For purposes of this Section due
24 advertisement includes, but is not limited to, at least one
25 public notice at least 10 days before the bid date in a
26 newspaper published in the district, or if no newspaper is

1 published in the district, in a newspaper of general
2 circulation in the area of the district. State master contracts
3 and certified education purchasing contracts, as defined in
4 Article 28A of this Code, are not subject to the requirements
5 of this paragraph.

6 Under this Section, the acceptance of bids sealed by a
7 bidder and the opening of these bids at a public bid opening
8 may be permitted by an electronic process for communicating,
9 accepting, and opening competitive bids. However, bids for
10 construction purposes are prohibited from being communicated,
11 accepted, or opened electronically. An electronic bidding
12 process must provide for, but is not limited to, the following
13 safeguards:

14 (1) On the date and time certain of a bid opening, the
15 primary person conducting the competitive, sealed,
16 electronic bid process shall log onto a specified database
17 using a unique username and password previously assigned to
18 the bidder to allow access to the bidder's specific bid
19 project number.

20 (2) The specified electronic database must be on a
21 network that (i) is in a secure environment behind a
22 firewall; (ii) has specific encryption tools; (iii)
23 maintains specific intrusion detection systems; (iv) has
24 redundant systems architecture with data storage back-up,
25 whether by compact disc or tape; and (v) maintains a
26 disaster recovery plan.

1 It is the legislative intent of Public Act 96-841 to maintain
2 the integrity of the sealed bidding process provided for in
3 this Section, to further limit any possibility of bid-rigging,
4 to reduce administrative costs to school districts, and to
5 effect efficiencies in communications with bidders.

6 (b) To require, as a condition of any contract for goods
7 and services, that persons bidding for and awarded a contract
8 and all affiliates of the person collect and remit Illinois Use
9 Tax on all sales of tangible personal property into the State
10 of Illinois in accordance with the provisions of the Illinois
11 Use Tax Act regardless of whether the person or affiliate is a
12 "retailer maintaining a place of business within this State" as
13 defined in Section 2 of the Use Tax Act. For purposes of this
14 Section, the term "affiliate" means any entity that (1)
15 directly, indirectly, or constructively controls another
16 entity, (2) is directly, indirectly, or constructively
17 controlled by another entity, or (3) is subject to the control
18 of a common entity. For purposes of this subsection (b), an
19 entity controls another entity if it owns, directly or
20 individually, more than 10% of the voting securities of that
21 entity. As used in this subsection (b), the term "voting
22 security" means a security that (1) confers upon the holder the
23 right to vote for the election of members of the board of
24 directors or similar governing body of the business or (2) is
25 convertible into, or entitles the holder to receive upon its
26 exercise, a security that confers such a right to vote. A

1 general partnership interest is a voting security.

2 To require that bids and contracts include a certification
3 by the bidder or contractor that the bidder or contractor is
4 not barred from bidding for or entering into a contract under
5 this Section and that the bidder or contractor acknowledges
6 that the school board may declare the contract void if the
7 certification completed pursuant to this subsection (b) is
8 false.

9 (b-5) To require all contracts and agreements that pertain
10 to goods and services and that are intended to generate
11 additional revenue and other remunerations for the school
12 district in excess of \$1,000, including without limitation
13 vending machine contracts, sports and other attire, class
14 rings, and photographic services, to be approved by the school
15 board. The school board shall file as an attachment to its
16 annual budget a report, in a form as determined by the State
17 Board of Education, indicating for the prior year the name of
18 the vendor, the product or service provided, and the actual net
19 revenue and non-monetary remuneration from each of the
20 contracts or agreements. In addition, the report shall indicate
21 for what purpose the revenue was used and how and to whom the
22 non-monetary remuneration was distributed.

23 (c) If the State education purchasing entity creates a
24 master contract as defined in Article 28A of this Code, then
25 the State education purchasing entity shall notify school
26 districts of the existence of the master contract.

1 (d) In purchasing supplies, materials, equipment, or
2 services that are not subject to subsection (c) of this
3 Section, before a school district solicits bids or awards a
4 contract, the district may review and consider as a bid under
5 subsection (a) of this Section certified education purchasing
6 contracts that are already available through the State
7 education purchasing entity.

8 (Source: P.A. 96-392, eff. 1-1-10; 96-841, eff. 12-23-09;
9 96-1000, eff. 7-2-10; 97-951, eff. 8-13-12.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.