

SB1686



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1686

Introduced 2/26/2021, by Sen. Scott M. Bennett

SYNOPSIS AS INTRODUCED:

105 ILCS 5/10-20.21

Amends the School Code. Provides that a school board may award a contract to a bidder who is not the lowest responsible bidder if the school board has considered factors of social responsibility in its decision to award the contract to the bidder. Provides that factors of social responsibility include, but are not limited to, businesses owned by women, minorities, persons with disabilities, or veterans and bidders who have programs or relationships that benefit such businesses. Effective immediately.

LRB102 16382 CMG 21771 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
10 \$25,000 or a lower amount as required by board policy to the
11 lowest responsible bidder, considering conformity with
12 specifications, terms of delivery, quality and serviceability,
13 after due advertisement, except as otherwise provided under
14 subsection (a-5) or except the following: (i) contracts for
15 the services of individuals possessing a high degree of
16 professional skill where the ability or fitness of the
17 individual plays an important part; (ii) contracts for the
18 printing of finance committee reports and departmental
19 reports; (iii) contracts for the printing or engraving of
20 bonds, tax warrants and other evidences of indebtedness; (iv)
21 contracts for the purchase of perishable foods and perishable
22 beverages; (v) contracts for materials and work which have
23 been awarded to the lowest responsible bidder after due

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

1 such as water, light, heat, telephone or telegraph; (xiv)
2 where funds are expended in an emergency and such emergency
3 expenditure is approved by 3/4 of the members of the board;
4 (xv) State master contracts authorized under Article 28A of
5 this Code; and (xvi) contracts providing for the
6 transportation of pupils, which contracts must be advertised
7 in the same manner as competitive bids and awarded by first
8 considering the bidder or bidders most able to provide safety
9 and comfort for the pupils, stability of service, and any
10 other factors set forth in the request for proposal regarding
11 quality of service, and then price. However, at no time shall a
12 cause of action lie against a school board for awarding a pupil
13 transportation contract per the standards set forth in this
14 subsection (a) unless the cause of action is based on
15 fraudulent conduct.

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

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

5 Under this Section, the acceptance of bids sealed by a
6 bidder and the opening of these bids at a public bid opening
7 may be permitted by an electronic process for communicating,
8 accepting, and opening competitive bids. An electronic bidding
9 process must provide for, but is not limited to, the following
10 safeguards:

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

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

24 It is the legislative intent of Public Act 96-841 to maintain
25 the integrity of the sealed bidding process provided for in
26 this Section, to further limit any possibility of bid-rigging,

1 to reduce administrative costs to school districts, and to
2 effect efficiencies in communications with bidders.

3 (a-5) Notwithstanding subsection (a), a school board may
4 award a contract under this Section to a bidder who is not the
5 lowest responsible bidder if the school board has considered
6 factors of social responsibility in the school board's
7 decision to award the contract to the bidder. Factors of
8 social responsibility include, but are not limited to,
9 businesses owned by women, minorities, persons with
10 disabilities, or veterans and bidders who have programs or
11 relationships that benefit such businesses.

12 (b) To require, as a condition of any contract for goods
13 and services, that persons bidding for and awarded a contract
14 and all affiliates of the person collect and remit Illinois
15 Use Tax on all sales of tangible personal property into the
16 State of Illinois in accordance with the provisions of the
17 Illinois Use Tax Act regardless of whether the person or
18 affiliate is a "retailer maintaining a place of business
19 within this State" as defined in Section 2 of the Use Tax Act.
20 For purposes of this Section, the term "affiliate" means any
21 entity that (1) directly, indirectly, or constructively
22 controls another entity, (2) is directly, indirectly, or
23 constructively controlled by another entity, or (3) is subject
24 to the control of a common entity. For purposes of this
25 subsection (b), an entity controls another entity if it owns,
26 directly or individually, more than 10% of the voting

1 securities of that entity. As used in this subsection (b), the
2 term "voting security" means a security that (1) confers upon
3 the holder the right to vote for the election of members of the
4 board of directors or similar governing body of the business
5 or (2) is convertible into, or entitles the holder to receive
6 upon its exercise, a security that confers such a right to
7 vote. A general partnership interest is a voting security.

8 To require that bids and contracts include a certification
9 by the bidder or contractor that the bidder or contractor is
10 not barred from bidding for or entering into a contract under
11 this Section and that the bidder or contractor acknowledges
12 that the school board may declare the contract void if the
13 certification completed pursuant to this subsection (b) is
14 false.

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

1 indicate for what purpose the revenue was used and how and to
2 whom the non-monetary remuneration was distributed.

3 (b-10) To prohibit any contract to purchase food with a
4 bidder or offeror if the bidder's or offeror's contract terms
5 prohibit the school from donating food to food banks,
6 including, but not limited to, homeless shelters, food
7 pantries, and soup kitchens.

8 (c) If the State education purchasing entity creates a
9 master contract as defined in Article 28A of this Code, then
10 the State education purchasing entity shall notify school
11 districts of the existence of the master contract.

12 (d) In purchasing supplies, materials, equipment, or
13 services that are not subject to subsection (c) of this
14 Section, before a school district solicits bids or awards a
15 contract, the district may review and consider as a bid under
16 subsection (a) of this Section certified education purchasing
17 contracts that are already available through the State
18 education purchasing entity.

19 (Source: P.A. 101-570, eff. 8-23-19; 101-632, eff. 6-5-20.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.