

# HB3255



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB3255

by Rep. Dan Brady

#### SYNOPSIS AS INTRODUCED:

105 ILCS 5/10-20.21

Amends the School Code. With regard to the requirement that all contracts for the purchase of supplies and materials or work involving an expenditure in excess of \$25,000 or a lower amount as required by school board policy be awarded to the lowest responsible bidder, exempts contracts for the purchase of commodities with prices affected by the trade of commodities and derivatives on a United States commodities exchange, including, but not limited to, gasoline, diesel, and natural gas (rather than contracts for the purchase of natural gas when the cost is less than that offered by a public utility). Effective immediately.

LRB101 04838 AXK 49847 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 commodities with prices affected  
14 by the trade of commodities and derivatives on a United States  
15 commodities exchange, including, but not limited to, gasoline,  
16 diesel, and natural gas ~~when the cost is less than that offered~~  
17 ~~by a public utility~~; (x) purchases of equipment previously  
18 owned by some entity other than the district itself; (xi)  
19 contracts for repair, maintenance, remodeling, renovation, or  
20 construction, or a single project involving an expenditure not  
21 to exceed \$50,000 and not involving a change or increase in the  
22 size, type, or extent of an existing facility; (xii) contracts  
23 for goods or services procured from another governmental  
24 agency; (xiii) contracts for goods or services which are  
25 economically procurable from only one source, such as for the  
26 purchase of magazines, books, periodicals, pamphlets and

1 reports, and for utility services such as water, light, heat,  
2 telephone or telegraph; (xiv) where funds are expended in an  
3 emergency and such emergency expenditure is approved by 3/4 of  
4 the members of the board; (xv) State master contracts  
5 authorized under Article 28A of this Code; and (xvi) contracts  
6 providing for the transportation of pupils, which contracts  
7 must be advertised in the same manner as competitive bids and  
8 awarded by first considering the bidder or bidders most able to  
9 provide safety and comfort for the pupils, stability of  
10 service, and any other factors set forth in the request for  
11 proposal regarding quality of service, and then price. However,  
12 at no time shall a cause of action lie against a school board  
13 for awarding a pupil transportation contract per the standards  
14 set forth in this subsection (a) unless the cause of action is  
15 based on 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 contracts  
2 and certified education purchasing contracts, as defined in  
3 Article 28A of this Code, are not subject to the requirements  
4 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. However, bids for  
9 construction purposes are prohibited from being communicated,  
10 accepted, or opened electronically. An electronic bidding  
11 process must provide for, but is not limited to, the following  
12 safeguards:

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

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

26 It is the legislative intent of Public Act 96-841 to maintain

1 the integrity of the sealed bidding process provided for in  
2 this Section, to further limit any possibility of bid-rigging,  
3 to reduce administrative costs to school districts, and to  
4 effect efficiencies in communications with bidders.

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

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

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

22           (b-10) To prohibit any contract to purchase food with a  
23 bidder or offeror if the bidder's or offeror's contract terms  
24 prohibit the school from donating food to food banks,  
25 including, but not limited to, homeless shelters, food  
26 pantries, and soup kitchens.

1           (c) If the State education purchasing entity creates a  
2 master contract as defined in Article 28A of this Code, then  
3 the State education purchasing entity shall notify school  
4 districts of the existence of the master contract.

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

12           (Source: P.A. 99-552, eff. 7-15-16.)

13           Section 99. Effective date. This Act takes effect upon  
14 becoming law.