

HB4813



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4813

Introduced 1/27/2022, by Rep. Jehan Gordon-Booth

SYNOPSIS AS INTRODUCED:

105 ILCS 5/10-20.21

Amends the School Code. Exempts from contract bidding requirements contracts for goods, services, or management in the operation of a school's food service, including a school that participates in any of the United States Department of Agriculture's child nutrition programs. Effective immediately.

LRB102 25424 CMG 34709 b

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 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
22 been 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 fuel, including diesel,
14 gasoline, oil, aviation, natural gas, or propane, lubricants,
15 or other petroleum products; (x) purchases of equipment
16 previously owned by some entity other than the district
17 itself; (xi) contracts for repair, maintenance, remodeling,
18 renovation, or construction, or a single project involving an
19 expenditure not to exceed \$50,000 and not involving a change
20 or increase in the size, type, or extent of an existing
21 facility; (xii) contracts for goods or services procured from
22 another governmental agency; (xiii) contracts for goods or
23 services which are economically procurable from only one
24 source, such as for the purchase of magazines, books,
25 periodicals, pamphlets and reports, and for utility services
26 such as water, light, heat, telephone or telegraph; (xiv)

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

18 All competitive bids for contracts involving an
19 expenditure in excess of \$25,000 or a lower amount as required
20 by board policy must be sealed by the bidder and must be opened
21 by a member or employee of the school board at a public bid
22 opening at which the contents of the bids must be announced.
23 Each bidder must receive at least 3 days' notice of the time
24 and place of the bid opening. For purposes of this Section due
25 advertisement includes, but is not limited to, at least one
26 public notice at least 10 days before the bid date in a

1 newspaper published in the district, or if no newspaper is
2 published in the district, in a newspaper of general
3 circulation in the area of the district. State master
4 contracts and certified education purchasing contracts, as
5 defined in Article 28A of this Code, are not subject to the
6 requirements of this paragraph.

7 Under this Section, the acceptance of bids sealed by a
8 bidder and the opening of these bids at a public bid opening
9 may be permitted by an electronic process for communicating,
10 accepting, and opening competitive bids. 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
17 to 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
8 Use Tax on all sales of tangible personal property into the
9 State of Illinois in accordance with the provisions of the
10 Illinois Use Tax Act regardless of whether the person or
11 affiliate is a "retailer maintaining a place of business
12 within this State" as defined in Section 2 of the Use Tax Act.
13 For purposes of this Section, the term "affiliate" means any
14 entity that (1) directly, indirectly, or constructively
15 controls another entity, (2) is directly, indirectly, or
16 constructively controlled by another entity, or (3) is subject
17 to the control of a common entity. For purposes of this
18 subsection (b), an entity controls another entity if it owns,
19 directly or individually, more than 10% of the voting
20 securities of that entity. As used in this subsection (b), the
21 term "voting security" means a security that (1) confers upon
22 the holder the right to vote for the election of members of the
23 board of directors or similar governing body of the business
24 or (2) is convertible into, or entitles the holder to receive
25 upon its exercise, a security that confers such a right to
26 vote. A 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
18 net revenue and non-monetary remuneration from each of the
19 contracts or agreements. In addition, the report shall
20 indicate for what purpose the revenue was used and how and to
21 whom the 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. 101-570, eff. 8-23-19; 101-632, eff. 6-5-20.)

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