

AN ACT concerning education.

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

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

(105 ILCS 5/10-20.21)

Sec. 10-20.21. Contracts.

(a) To award all contracts for purchase of supplies ~~and~~ materials or work ~~or contracts with private carriers for transportation of pupils~~ involving an expenditure in excess of \$25,000 or a lower amount as required by board policy to the lowest responsible bidder, considering conformity with specifications, terms of delivery, quality and serviceability, after due advertisement, except the following: (i) contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part; (ii) contracts for the printing of finance committee reports and departmental reports; (iii) contracts for the printing or engraving of bonds, tax warrants and other evidences of indebtedness; (iv) contracts for the purchase of perishable foods and perishable beverages; (v) contracts for materials and work which have been awarded to the lowest responsible bidder after due

advertisement, but due to unforeseen revisions, not the fault of the contractor for materials and work, must be revised causing expenditures not in excess of 10% of the contract price; (vi) contracts for the maintenance or servicing of, or provision of repair parts for, equipment which are made with the manufacturer or authorized service agent of that equipment where the provision of parts, maintenance, or servicing can best be performed by the manufacturer or authorized service agent; (vii) purchases and contracts for the use, purchase, delivery, movement, or installation of data processing equipment, software, or services and telecommunications and interconnect equipment, software, and services; (viii) contracts for duplicating machines and supplies; (ix) contracts for the purchase of natural gas when the cost is less than that offered by a public utility; (x) purchases of equipment previously owned by some entity other than the district itself; (xi) contracts for repair, maintenance, remodeling, renovation, or construction, or a single project involving an expenditure not to exceed \$50,000 and not involving a change or increase in the size, type, or extent of an existing facility; (xii) contracts for goods or services procured from another governmental agency; (xiii) contracts for goods or services which are economically procurable from only one source, such as for the purchase of magazines, books, periodicals, pamphlets and reports, and for utility services such as water, light, heat, telephone or telegraph; (xiv) where

funds are expended in an emergency and such emergency expenditure is approved by 3/4 of the members of the board; (xv) State master contracts authorized under Article 28A of this Code; and (xvi) contracts providing for the transportation of pupils ~~with special needs or disabilities~~, which contracts must be advertised in the same manner as competitive bids and awarded by first considering the bidder or bidders most able to provide safety and comfort for the pupils ~~with special needs or disabilities~~, stability of service, and any other factors set forth in the request for proposal regarding quality of service, and then price. However, at no time shall a cause of action lie against a school board for awarding a pupil transportation contract per the standards set forth in this subsection (a) unless the cause of action is based on fraudulent conduct.

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

and certified education purchasing contracts, as defined in Article 28A of this Code, are not subject to the requirements of this paragraph.

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

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

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

It is the legislative intent of Public Act 96-841 to maintain the integrity of the sealed bidding process provided for in

this Section, to further limit any possibility of bid-rigging, to reduce administrative costs to school districts, and to effect efficiencies in communications with bidders.

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

To require that bids and contracts include a certification

by the bidder or contractor that the bidder or contractor is not barred from bidding for or entering into a contract under this Section and that the bidder or contractor acknowledges that the school board may declare the contract void if the certification completed pursuant to this subsection (b) is false.

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

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

(d) In purchasing supplies, materials, equipment, or services that are not subject to subsection (c) of this

Section, before a school district solicits bids or awards a contract, the district may review and consider as a bid under subsection (a) of this Section certified education purchasing contracts that are already available through the State education purchasing entity.

(Source: P.A. 95-990, eff. 10-3-08; 96-392, eff. 1-1-10; 96-841, eff. 12-23-09; 96-1000, eff. 7-2-10.)

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