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JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
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CHAPTER 50

HOUSE BILL 2105

AN ACT

AMENDING SECTION 15-213, ARIZONA REVISED STATUTES; RELATING TO SCHOOL DISTRICT PROCUREMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 15-213, Arizona Revised Statutes, is amended to read:

15-213. Procurement practices of school districts and charter schools; definitions

A. The state board of education shall adopt rules prescribing procurement practices for all school districts in this state as follows:

1. The state board shall submit to the auditor general proposed rules consistent with the procurement practices prescribed in title 41, chapter 23, modifying the provisions for public notice of invitation for bids, requests for proposals and requests for qualifications to allow a governing board to give public notice of the invitation for bids, requests for proposals and requests for qualifications by publication in the official newspaper of the county as defined in section 11-255, modifying the provisions relating to disposal of materials to comply with section 15-342, paragraph 18, providing for governing board delegation of procurement authority and modifying as necessary other provisions which the state board determines are not appropriate for school districts, for procurement of construction, construction services, materials or services when the total procurement exceeds thirty thousand dollars in total cost. The rules shall include provisions specifying that school districts are not required to engage in competitive bidding in order to make the decision to participate in programs pursuant to section 15-382 and that a program authorized by section 15-382 is not required to engage in competitive bidding for the services necessary to administer the program or for purchase of insurance or reinsurance. The rules for procurement of construction projects shall include provisions specifying that surety bonds furnished as bid security and performance and payment bonds shall be executed and furnished as required by title 34, chapter 2 or 6, as applicable.

2. The state board of education shall adopt rules for procurements involving construction not exceeding one hundred fifty thousand dollars which shall be known as the simplified school construction procurement program. At a minimum, the rules for a simplified construction procurement program shall require that:

(a) A list be maintained by each county school superintendent of persons who desire to receive solicitations to bid on construction projects to which additions shall be permitted throughout the year.

(b) The list of persons be available for public inspection.

(c) A performance bond and a payment bond as required by this section be provided for contracts for construction by contractors.

(d) All bids for construction be opened at a public opening and the bids shall remain confidential until the public opening.

(e) All persons desiring to submit bids be treated equitably and the information related to each project be available to all eligible persons.

(f) Competition for construction projects under the simplified school construction procurement program be encouraged to the maximum extent possible. At a minimum, a school district shall submit information on each project to all persons listed with the county school superintendent by any school district within that county.

(g) A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state is against this state's public policy and is void and unenforceable.

3. On or before December 31, 2004, the state board of education shall adopt rules for the procurement of goods and information services by school districts and charter schools using electronic, on-line bidding. The rules adopted by the state board shall include the use of reverse auctions and shall be consistent with the procurement practices prescribed in title 41, chapter 23, article 13, modifying as necessary those provisions and the rules adopted pursuant to that article that the state board determines are not appropriate for school districts and charter schools. Until the rules are adopted school districts and charter schools may procure goods and information services pursuant to title 41, chapter 23, article 13 using the rules adopted by the department of administration in implementing that article.

4. The auditor general shall review the proposed rules to determine whether the rules are consistent with the procurement practices prescribed in title 41, chapter 23 and any modifications are required to adapt the procedures for school districts.

5. If the auditor general approves the proposed rules, the auditor general shall notify the state board in writing and the state board shall adopt such rules.

6. If the auditor general objects to the proposed rules, the auditor general shall notify the state board of the objections in writing and the state board, in adopting the rules, shall conform the proposed rules to meet the objections of the auditor general or revise the proposed rules to which an objection has been made and submit the revisions to the auditor general for approval.

B. After the bids submitted in response to an invitation for bids are opened and the award is made or after the proposals or qualifications are submitted in response to a request for proposals or a request for qualifications and the award is made, the governing board shall make available for public inspection all information, all bids, proposals and qualifications submitted and all findings and other information considered in determining whose bid conforms to the invitation for bids and will be the most advantageous with respect to price, conformity to the specifications and other factors or whose proposal or qualifications are to be selected for the

award. The invitation for bids, request for proposals or request for qualifications shall include a notice that all information and bids, proposals and qualifications submitted will be made available for public inspection. The rules adopted by the state board shall prohibit the use in connection with procurement of specifications in any way proprietary to one supplier unless the specification includes all of the following:

1. A statement of the reasons why no other specification is practicable.

2. A description of the essential characteristics of the specified product.

3. A statement specifically permitting an acceptable alternative product to be supplied.

C. No project or purchase may be divided or sequenced into separate projects or purchases in order to avoid the limits prescribed by the state board under subsection A of this section.

D. A contract for the procurement of construction or construction services shall include a provision which provides for negotiations between the school district and the contractor for the recovery of damages related to expenses incurred by the contractor for a delay for which the school district is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the contract. This subsection shall not be construed to void any provision in the contract which requires notice of delays, provides for arbitration or other procedure for settlement or provides for liquidated damages.

E. The auditor general may conduct discretionary reviews, investigations and audits of the financial and operational procurement activities of school districts, nonexempt charter schools and school purchasing cooperatives. The auditor general has final review and approval authority over all school district, nonexempt charter school and school purchasing cooperative audit contracts and any audit reports issued in accordance with this section.

F. In addition to the requirements of sections 15-914 and 15-914.01, school districts, nonexempt charter schools and school purchasing cooperatives, in connection with any audit conducted by a certified public accountant, shall contract for a systematic review of purchasing practices using methodology consistent with sampling guidelines established by the auditor general. The auditor general shall consider cost when establishing guidelines pursuant to this subsection and to the extent possible shall attempt to minimize the cost of the review. The purpose of the review is to determine whether the school district, nonexempt charter school or school purchasing cooperative is in compliance with the procurement laws and applicable procurement rules of this state. A copy of the review shall be submitted upon completion to the auditor general. The auditor general may conduct discretionary reviews of school districts, nonexempt charter schools

and school purchasing cooperatives not required to contract for independent audits.

G. The attorney general or county attorney has jurisdiction to enforce this section. The attorney general or county attorney may seek relief for any violation of this section through an appropriate civil or criminal action in superior court including an action to enjoin a threatened or pending violation of this section and including an action to enforce compliance with any request for documents made by the auditor general pursuant to this section.

H. The department of education shall enact policies and procedures for the acceptance and disposition of complaints from the public regarding school procurement practices and shall forward all school procurement complaints to the attorney general.

I. The state board of education shall adjust the total cost provided for in subsection A, paragraph 1 of this section by the annual percentage change in the GDP price deflator as defined in section 41-563.

J. The state board of education and the auditor general shall adopt rules authorizing school districts to procure construction services by construction-manager-at-risk, design-build, qualified select bidders list and job-order-contracting methods of project delivery. The rules adopted shall require each school district that uses construction-manager-at-risk, design-build, qualified select bidders list or job-order-contracting to procure construction services to submit, on or before January 15 of each year, a report to the secretary of state on the benefits associated with the use of such procurement methods. The report shall include the number of projects completed in the preceding calendar year using that procurement method, the cost and description of each project and an estimate of any cost savings or other benefits realized through the use of that procurement method.

K. The dollar amount of each job order under any job-order-contracting construction services program shall not be more than the dollar amount determined pursuant to section 41-2578, subsection J, paragraph 1.

L. A SCHOOL DISTRICT OR CHARTER SCHOOL MAY EVALUATE GENERAL SERVICES ADMINISTRATION CONTRACTS FOR MATERIALS AND SERVICES. THE GOVERNING BOARD OR GOVERNING BODY MAY AUTHORIZE PURCHASES UNDER A CURRENT CONTRACT FOR MATERIALS OR SERVICES WITHOUT COMPLYING WITH THE REQUIREMENTS OF THE PROCUREMENT RULES ADOPTED BY THE STATE BOARD OF EDUCATION IF THE GOVERNING BOARD OR GOVERNING BODY DETERMINES IN WRITING THAT ALL OF THE FOLLOWING APPLY:

1. THE PRICE FOR MATERIALS OR SERVICES IS EQUAL TO OR LESS THAN THE CONTRACTOR'S CURRENT FEDERAL SUPPLY CONTRACT PRICE WITH THE GENERAL SERVICES ADMINISTRATION.

2. THE CONTRACTOR HAS INDICATED IN WRITING THAT THE CONTRACTOR IS WILLING TO EXTEND THE CURRENT FEDERAL SUPPLY CONTRACT PRICING, TERMS AND CONDITIONS TO THE SCHOOL DISTRICT OR CHARTER SCHOOL.

3. THE PURCHASE ORDER ADEQUATELY IDENTIFIES THE FEDERAL SUPPLY CONTRACT ON WHICH THE ORDER IS BASED.

4. THE PURCHASE CONTRACT IS COST-EFFECTIVE AND IS IN THE BEST INTERESTS OF THE SCHOOL DISTRICT OR CHARTER SCHOOL.

~~L.~~ M. For the purposes of this section:

1. "Nonexempt charter school" means a charter school that is not exempted from procurement laws pursuant to section 15-183, subsection E, paragraph 6.

2. "School purchasing cooperative" means an entity engaged in cooperative purchasing as defined in section 41-2631.

3. "Total cost" means the cost of all materials and services, including the cost of labor performed by employees of the school district, for all construction as provided in subsection A of this section.

APPROVED BY THE GOVERNOR APRIL 7, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2004.