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# SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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**Bill No:** SB 544 **Hearing Date:** August 23, 2017  
**Author:** McGuire  
**Version:** July 5, 2017  
**Urgency:** No **Fiscal:** No  
**Consultant:** Brandon Darnell

**Subject:** School districts contracting

**NOTE:** This bill was amended in the Assembly to replace its contents and this is the first time the bill is being heard by this Committee in its current form.

## SUMMARY

This bill requires school districts to award contracts for the provision of child nutrition program supplies to the most responsive and responsible party and requires price to be the primary consideration, but not the only determining factor.

## BACKGROUND

Existing federal law requires, as a condition of receipt of federal funds, that the recipient award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration is to be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Contracts are to be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. (Federal Code of Regulations, Title 2, § 200.318 and 200.320)

Existing state law specifies that the governing board of any school district must let any contracts involving an expenditure of more than \$50,000, as adjusted for inflation (currently \$88,300), for the purchase of equipment, materials, or supplies; services, other than construction services; and repairs; to be let to the lowest responsible bidder. (Public Contract Code, § 20111)

## ANALYSIS

This bill requires school districts to award contracts for the provision of child nutrition program supplies to the most responsive and responsible party and requires price to be the primary consideration, but not the only determining factor. Specifically, this bill:

- 1) Requires procurement bid solicitations and awards made by a school district operating child nutrition programs to be consistent with federal procurement standards.
- 2) Requires such contracts to be awarded to the most responsive and responsible party and requires price to be the primary consideration, but not the only determining factor.

**STAFF COMMENTS**

- 1) ***Need for the bill.*** According to the author, “Late last fall, legal staff in California Department of Education’s (CDE’s) Nutrition Services Division stated that they had reviewed the California Public Contract Code regarding the use of Requests for Proposals (RFPs) and determined that, based on the language of the statute, districts may only award contracts for meal provision services to the lowest bidder. Conversely, federal regulations require contracts to be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

CDE’s interpretation adversely affects the provision of school and afterschool meals and snacks, as it means that a district or afterschool program provider cannot choose a vendor who might have submitted a higher bid but who can provide foods that might be locally sourced, be of better quality or that would appeal to students of different ethnicities, such as foods they eat at home.”

- 2) ***Criteria for selection of food service providers.*** According to the CDE, both federal regulations and California state laws require all procurements—without regard to dollar value—to be conducted in a manner that promotes maximum open and free competition. School food authorities (SFA) must conduct either a formal or an informal bidding process.

An RFP, also known as a competitive proposal, is a method of procurement whereby SFAs publicly solicit a technical proposal that explains how the prospective contractor will meet the objectives of the solicitation, and includes a cost element that identifies the costs to accomplish the technical proposal. While price alone is not the sole basis for award, it remains the primary consideration when awarding a contract under the RFP method.

Invitations for Bids (IFBs), also known as competitive sealed bids, is a formal method of procurement in which SFAs publicly solicit sealed bids from an adequate number of known suppliers, with the goal of obtaining three bids at a minimum. The SFA must award the fixed-price contract to the lowest priced, most responsible bidder, whose bid is responsive, and conforms with all the material terms and conditions of the IFB. SFAs must allow bidders sufficient time to respond prior to the date set for opening the bids. SFAs seeking proposals from meal vendors should use the IFB method of procurement, according to CDE.

Regardless of the type of bid method an SFA uses, SFAs must award the contract to the lowest bidder who best meets the SFA’s needs and stated objectives. The SFA must retain all bidding documents for three years after the final contract payment and, in the event of an audit, three years beyond the final audit resolution.

- 3) ***Consistent with approach toward healthier food options.*** In recent years, both the federal and state governments have taken action to encourage smarter, healthier food options and choices in schools. This includes specific caloric, fat,

and sugar limits and restrictions against soda, among other things. These changes in priorities necessitate changes in what foods and supplies schools procure, which could lead to increased costs for healthier foods. For example, according to the author, “A school food service provider was not able to provide diverse foods that might have been more appealing to the district’s multiethnic student population because the vendor with the lowest bid did not offer any such options” and “the quality of the food that one school food service provider received was so poor that he was not comfortable serving it to the students.”

By ensuring that school food authorities (SFAs) are able to take factors beyond price into consideration, the bill would enable SFAs to better align their food procurements with the priorities established in law.

- 4) ***First time being heard in this committee in its current form.*** A previous version of this bill was heard in this committee on March 29, 2017, and passed 7-0. That version of the bill was relative to pupil assessments. The author amended the bill on July 5, 2017, into its current form, relative to awarding contracts for the provision of child nutrition program supplies.

#### **SUPPORT**

California Food Policy Advocates  
California School Nutrition Association

#### **OPPOSITION**

None received

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