

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

CHAPTER 279

SENATE BILL 1060

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 15-213. Procurement practices of school districts and charter
5 schools; definitions

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

8 1. The state board shall submit to the auditor general proposed rules
9 consistent with the procurement practices prescribed in title 41, chapter 23,
10 modifying the provisions for public notice of invitation for bids, requests
11 for proposals and requests for qualifications to allow a governing board to
12 give public notice of the invitation for bids, requests for proposals and
13 requests for qualifications by publication in the official newspaper of the
14 county as defined in section 11-255, modifying the provisions relating to
15 disposal of materials to comply with section 15-342, paragraph 18, providing
16 for governing board delegation of procurement authority and modifying as
17 necessary other provisions that the state board determines are not
18 appropriate for school districts. The rules shall include provisions
19 specifying that school districts are not required to engage in competitive
20 bidding in order to make the decision to participate in programs pursuant to
21 section 15-382 and that a program authorized by section 15-382 is not
22 required to engage in competitive bidding for the services necessary to
23 administer the program or for purchase of insurance or reinsurance. The
24 rules shall include provisions specifying that school districts are not
25 required to engage in competitive bidding in order to place a pupil in a
26 private school that provides special education services if such placement is
27 prescribed in the pupil's individualized education program and the private
28 school has been approved by the department of education division of special
29 education pursuant to section 15-765, subsection D. This placement is not
30 subject to rules adopted by the state board of education before November 24,
31 2009 pursuant to this section. The rules for procurement of construction
32 projects shall include provisions specifying that surety bonds furnished as
33 bid security and performance and payment bonds shall be executed and
34 furnished as required by title 34, chapter 2 or 6, as applicable. The rules
35 shall specify the total cost of a procurement that is subject to invitations
36 for bids, requests for proposals and requests for clarification, using the
37 aggregate dollar amount limits for procurements prescribed in section
38 41-2535.

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

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

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

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

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

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

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

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

22 3. The state board of education shall adopt rules for the procurement
23 of goods and information services by school districts and charter schools
24 using electronic, online bidding. The rules adopted by the state board shall
25 include the use of reverse auctions and shall be consistent with the
26 procurement practices prescribed in title 41, chapter 23, article 13,
27 modifying as necessary those provisions and the rules adopted pursuant to
28 that article that the state board determines are not appropriate for school
29 districts and charter schools. Until the rules are adopted, school districts
30 and charter schools may procure goods and information services pursuant to
31 title 41, chapter 23, article 13 using the rules adopted by the department of
32 administration in implementing that article.

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

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

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

1 B. After the bids submitted in response to an invitation for bids are
2 opened and the award is made or after the proposals or qualifications are
3 submitted in response to a request for proposals or a request for
4 qualifications and the award is made, the governing board shall make
5 available for public inspection all information, all bids, proposals and
6 qualifications submitted and all findings and other information considered in
7 determining whose bid conforms to the invitation for bids and will be the
8 most advantageous with respect to price, conformity to the specifications and
9 other factors or whose proposal or qualifications are to be selected for the
10 award. The invitation for bids, request for proposals or request for
11 qualifications shall include a notice that all information and bids,
12 proposals and qualifications submitted will be made available for public
13 inspection. The rules adopted by the state board shall prohibit the use in
14 connection with procurement of specifications in any way proprietary to one
15 supplier unless the specification includes all of the following:

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

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

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

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

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

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

41 F. In addition to the requirements of sections 15-914 and 15-914.01,
42 school districts, nonexempt charter schools and school purchasing
43 cooperatives, in connection with any audit conducted by a certified public
44 accountant, shall contract for a systematic review of purchasing practices
45 using methodology consistent with sampling guidelines established by the

1 auditor general. The auditor general shall consider cost when establishing
2 guidelines pursuant to this subsection and to the extent possible shall
3 attempt to minimize the cost of the review. The purpose of the review is to
4 determine whether the school district, nonexempt charter school or school
5 purchasing cooperative is in compliance with the procurement laws and
6 applicable procurement rules of this state. A copy of the review shall be
7 submitted on completion to the auditor general. The auditor general may
8 conduct discretionary reviews of school districts, nonexempt charter schools
9 and school purchasing cooperatives not required to contract for independent
10 audits.

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

18 H. The department of education shall enact policies and procedures for
19 the acceptance and disposition of complaints from the public regarding school
20 procurement practices and shall forward all school procurement complaints to
21 the attorney general. Notwithstanding rules adopted by the state board,
22 school districts shall not be required to prepare or submit an annual report
23 on the benefits associated with the use of construction-manager-at-risk,
24 design-build, qualified select bidders list and job-order-contracting
25 methods.

26 I. The state board of education shall adopt, and the auditor general
27 shall review, rules authorizing school districts to procure construction
28 services by construction-manager-at-risk, design-build, qualified select
29 bidders list and job-order-contracting methods of project delivery. The
30 rules shall not require school districts to obtain bid security for the
31 construction-manager-at-risk method of project delivery.

32 J. A school district or charter school may evaluate United States
33 general services administration contracts for materials and services. The
34 governing board or governing body may authorize purchases under a current
35 contract for materials or services without complying with the requirements of
36 the procurement rules adopted by the state board of education if the
37 governing board or governing body determines in writing that all of the
38 following apply:

39 1. The price for materials or services is equal to or less than the
40 contractor's current federal supply contract price with the general services
41 administration.

42 2. The contractor has indicated in writing that the contractor is
43 willing to extend the current federal supply contract pricing, terms and
44 conditions to the school district or charter school.

1 3. The purchase order adequately identifies the federal supply
2 contract on which the order is based.

3 4. The purchase contract is cost effective and is in the best
4 interests of the school district or charter school.

5 K. Unless otherwise provided by law, MULTITERM contracts for materials
6 or services and contracts for job-order-contracting construction services may
7 be entered into if the duration of the contract and the conditions of renewal
8 or extension, if any, are included in the invitation for bids or the request
9 for proposals and if monies are available for the first fiscal period at the
10 time the contract is executed. The duration of contracts for materials or
11 services and contracts for job-order-contracting construction services shall
12 be limited to no more than five years unless the governing board determines
13 in writing BEFORE THE PROCUREMENT SOLICITATION IS ISSUED that a contract of
14 longer duration would be advantageous to the school district. Payment and
15 performance obligations for succeeding fiscal periods are subject to the
16 availability and appropriation of monies.

17 L. NOTWITHSTANDING THE RULES ADOPTED BY THE STATE BOARD OF
18 EDUCATION, THE MAXIMUM DOLLAR AMOUNT OF AN INDIVIDUAL JOB ORDER FOR
19 JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES SHALL BE ONE MILLION DOLLARS OR A
20 HIGHER OR LOWER AMOUNT PRESCRIBED BY THE GOVERNING BOARD IN A POLICY ADOPTED
21 IN A PUBLIC MEETING HELD PURSUANT TO TITLE 38, CHAPTER 3, ARTICLE 3.1.
22 REQUIREMENTS SHALL NOT BE ARTIFICIALLY DIVIDED OR FRAGMENTED IN ORDER TO
23 CONSTITUTE A JOB ORDER THAT SATISFIES THE REQUIREMENTS OF THIS SUBSECTION.

24 M. For the purposes of this section:

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

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

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

APPROVED BY THE GOVERNOR APRIL 17, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2012.

Passed the House April 9, 2012,

Passed the Senate February 9, 2012,

by the following vote: 40 Ayes,

by the following vote: 22 Ayes,

14 Nays, 6 Not Voting

7 Nays, 1 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR~~

~~This Bill was received by the Governor this
_____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

S.B. 1060

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE~~

~~This Bill was received by the Secretary of State
this _____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 12, 20 12

by the following vote: 21 Ayes,

9 Nays, 0 Not Voting

Steve Fierro
President of the Senate

Charmien Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

12th day of April, 20 12

at 10:59 o'clock A M.

Nanette Worm
Secretary to the Governor

Approved this 17th day of

April

at 11:29 o'clock A M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 17th day of April, 20 12

S.B. 1060

at 3:36 o'clock P M.

Kyle Blum
Secretary of State