

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

SB 544 (McGuire) – As Amended July 5, 2017

SENATE VOTE: 40-0 (prior vote not relevant)

SUBJECT: School districts contracting

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

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

EXISTING LAW:

- 1) Federal regulations require the awarding of 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, Sections 200.318 and 200.320)
- 2) California state law specifies that the governing board of any school district must let any contracts involving an expenditure of more than \$50,000 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, Section 20111)

FISCAL EFFECT: The Office of Legislative Counsel has keyed this bill as non-fiscal.

COMMENTS:

Need for the bill. According to the author, the California Department of Education (CDE) reviewed the California Public Contract Code regarding the use of Request for Proposals (RFPs) for nutrition services and determined that, based on the language of the statute, districts may only award contracts to the lowest bidder. 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 those foods they eat at home. The current California statute contradicts federal law which allows RFPs to include other conditions as long as price is the most heavily weighted factor.

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.

A RFP also known as a competitive proposal, is a method of procurement whereby school food authorities (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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Food Policy Advocates
California School Nutrition Association

Opposition

None on file

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