

HOUSE BILL No. 4695

May 31, 2011, Introduced by Reps. Shirkey, Huuki, Poleski, Pettalia, Santana, Opsommer, McMillin, Kowall, Foster, Goike, Ananich, Rogers and MacGregor and referred to the Committee on Commerce.

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending section 1267 (MCL 380.1267), as amended by 2008 PA 540.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1267. (1) Before commencing construction of a new school
2 building, or addition to or repair or renovation of an existing
3 school building, except repair in emergency situations, the board
4 of a school district or intermediate school district or board of
5 directors of a public school academy, shall obtain competitive bids
6 on all the material and labor required for the complete
7 construction of a proposed new building or addition to or repair or
8 renovation of an existing school building.

9 (2) The board, intermediate school board, or board of

1 directors shall advertise for the bids required under subsection
2 (1) by placing an advertisement for bids at least once in a
3 newspaper of general circulation in the area where the building or
4 addition is to be constructed or where the repair or renovation of
5 an existing building is to take place and by posting an
6 advertisement for bids for at least 2 weeks on the department of
7 management and budget website on a page on the website maintained
8 for this purpose or on a website maintained by a school
9 organization and designated by the department of management and
10 budget for this purpose. If the department of management and budget
11 designates a school organization website for this purpose, the
12 department of management and budget shall indicate this fact on its
13 website and include a link on its website to the school
14 organization website.

15 (3) The advertisement for bids shall do all of the following:

16 (a) Specify the date and time by which all bids must be
17 received by the board, intermediate school board, or board of
18 directors.

19 (b) State that the board, intermediate school board, or board
20 of directors will not consider or accept a bid received by the
21 board, intermediate school board, or board of directors after the
22 date and time specified for bid submission.

23 (c) Identify the time, date, and place of a public meeting at
24 which the board, intermediate school board, or board of directors
25 or its designee will open and read aloud each bid received by the
26 board, intermediate school board, or board of directors by the date
27 and time specified in subdivision (a).

(d) State that the bid shall be accompanied by a sworn and notarized statement disclosing any familial relationship that exists between the owner or any employee of the bidder and any member of the board, intermediate school board, or board of directors or the superintendent of the school district, intermediate superintendent of the intermediate school district, or chief executive officer of the public school academy. A board, intermediate school board, or board of directors shall not accept a bid that does not include this sworn and notarized disclosure statement.

(E) CONTAIN BID SPECIFICATIONS FOR MATERIALS TO BE USED IN PERFORMING THE CONTRACT. ALL OF THE FOLLOWING APPLY TO THESE BID SPECIFICATIONS:

(i) THE BID SPECIFICATIONS SHALL BE WRITTEN BY THE ARCHITECT, ENGINEER, DESIGNER, OR DRAFTSMAN WHO PROVIDES DESIGN SERVICES OR WRITES SPECIFICATIONS, DIRECTLY OR INDIRECTLY, FOR MATERIALS TO BE USED IN PERFORMING THE CONTRACT AND, SUBJECT TO SUBPARAGRAPH (ii), SHALL SPECIFY THE REQUIRED PERFORMANCE AND DESIGN CHARACTERISTICS OF THE MATERIALS. THE PERSON WHO WRITES THE BID SPECIFICATIONS SHALL NOT BE AN EMPLOYEE OR REPRESENTATIVE OF A MANUFACTURER OF AN ITEM TO BE USED IN PERFORMING THE CONTRACT.

(ii) IF IT IS IMPOSSIBLE OR IMPRACTICAL TO SPECIFY THE REQUIRED PERFORMANCE AND DESIGN CHARACTERISTICS, THEN THE ARCHITECT, ENGINEER, DESIGNER, OR DRAFTSMAN MAY SPECIFY A BRAND NAME AND 3 OR MORE EXAMPLES OF ITEMS THAT ESTABLISH AN ACCEPTABLE RANGE FOR ITEMS OF EQUAL OR EQUIVALENT DESIGN AND THAT ARE TOTALLY INDEPENDENT OF EACH OTHER IN REGARD TO OWNERSHIP. IF 3 OR MORE ITEMS OF SIMILAR OR

1 EQUIVALENT DESIGN AND INDEPENDENT OWNERSHIP ARE NOT AVAILABLE, THEN
2 AS MANY ITEMS MEETING THESE REQUIREMENTS AS ARE AVAILABLE SHALL BE
3 SPECIFIED.

4 (iii) THE SPECIFICATIONS SHALL STATE THAT BIDS DO NOT REQUIRE
5 THE SPECIFIED BRAND OF AN ITEM, WHICH IS LISTED ONLY TO DENOTE THE
6 QUALITY STANDARD FOR THE ITEM, AND THAT EQUIVALENT ITEMS ARE
7 ACCEPTABLE. A BID SPECIFICATION MAY LIST 1 OR MORE PREFERRED BRANDS
8 IF THE SPECIFICATION ALSO IDENTIFIES THE PERFORMANCE STANDARDS THAT
9 SUPPORT THE PREFERENCE. AN ITEM THAT MEETS THE PERFORMANCE STANDARD
10 SPECIFIED FOR THE LISTED, PREFERRED BRAND SHALL BE CONSIDERED
11 EQUIVALENT TO THE LISTED BRAND ITEM.

12 (4) The board, intermediate school board, or board of
13 directors shall require each bidder for a contract under this
14 section to file with the board, intermediate school board, or board
15 of directors security in an amount not less than 1/20 of the amount
16 of the bid conditioned to secure the school district from loss or
17 damage by reason of the withdrawal of the bid or by the failure of
18 the bidder to enter a contract for performance, if the bid is
19 accepted by the board, intermediate school board, or board of
20 directors.

21 (5) The board, intermediate school board, or board of
22 directors shall not open, consider, or accept a bid that the board,
23 intermediate school board, or board of directors receives after the
24 date and time specified for bid submission in the advertisement for
25 bids described in subsection (3).

26 (6) At a public meeting identified in the advertisement for
27 bids described in subsection (3), the board, intermediate school

1 board, or board of directors or its designee shall open and read
2 aloud each bid that the board, intermediate school board, or board
3 of directors received at or before the time and date for bid
4 submission specified in the advertisement for bids. The board,
5 intermediate school board, or board of directors may reject any or
6 all bids, and if all bids are rejected, shall readvertise in the
7 manner required by this section.

8 (7) The board of a school district or intermediate school
9 district or board of directors of a public school academy may adopt
10 and implement a local policy that gives a preference to a Michigan-
11 based business in awarding a contract under this section. The
12 policy may provide for a preference based on the status of the
13 primary contractor as a Michigan-based business or based on the
14 status of 1 or more subcontractors of the primary contractor as
15 Michigan-based businesses, or both. A policy adopted under this
16 subsection shall be consistent with federal statutes and
17 regulations and shall not be applied to a contract that is to be
18 paid with federal funds. Upon request by a school district,
19 intermediate school district, or public school academy that has
20 adopted and implemented a policy described in this subsection, the
21 department of treasury shall disclose to that school district,
22 intermediate school district, or public school academy verifying
23 information as described in section 268(3) of the management and
24 budget act, 1984 PA 431, MCL 18.1268. The adoption, implementation,
25 or application of a policy described in this subsection, or a
26 decision not to adopt, implement, or apply such a policy, does not
27 create a cause of action.

1 (8) This section does not apply to buildings, renovations, or
2 repairs costing less than ~~\$20,959.00~~ **\$21,308.00** or to repair work
3 normally performed by school district, intermediate school board,
4 or public school academy employees. The maximum amount specified in
5 this subsection shall be adjusted each year by multiplying the
6 amount for the immediately preceding year by the percentage by
7 which the average consumer price index for all items for the 12
8 months ending August 31 of the year in which the adjustment is made
9 differs from that index's average for the 12 months ending on
10 August 31 of the immediately preceding year and adding that product
11 to the maximum amount that applied in the immediately preceding
12 year, rounding to the nearest whole dollar.

13 (9) As used in this section, "Michigan-based business" means a
14 business that would qualify for a preference in a procurement
15 contract with this state under section 268 of the management and
16 budget act, 1984 PA 431, MCL 18.1268.