S T A T E O F N E W Y O R K

7494

I N S E N A T E

April 15, 2010

Introduced by Sen. PERKINS -- (at request of the Dormitory Authority of the State of New York) -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to the requirements for soliciting and awarding alternate delivery contracts and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1676 of the public authorities law is amended by adding a new subdivision 46 to read as follows:

46. "ALTERNATIVE DELIVERY SYSTEM CONTRACT" SHALL MEAN A CONTRACT AWARDED PURSUANT TO AN OPEN, OBJECTIVE AND COMPETITIVE METHOD OF PROCUREMENT IN WHICH AN ENTITY OR COMBINATION OF ENTITIES IS SELECTED TO PROVIDE CONSTRUCTION SERVICES TO THE AUTHORITY IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION TWENTY-FIVE OF SECTION SIXTEEN HUNDRED SEVENTY-EIGHT OF THIS TITLE.

S 2. Section 1678 of the public authorities law is amended by adding a new subdivision 25 to read as follows:

25. (A) TO SOLICIT AND AWARD AN ALTERNATIVE DELIVERY SYSTEM CONTRACT, NOTWITHSTANDING ANY OTHER PROVISION OF LAW THAT REQUIRES THE AUTHORITY TO AWARD CONTRACTS TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS OR THAT REQUIRES THE PREPARATION OF SEPARATE SPECIFICATIONS, FOR ANY PROJECT HAVING A COST IN EXCESS OF TEN MILLION DOLLARS. PRIOR TO USING THE ALTERNATIVE DELIVERY SYSTEM METHOD OF PROCUREMENT, THE AUTHORITY SHALL MAKE A WRITTEN DETERMINATION IDENTIFYING THE SPECIFIC BENEFITS, SUCH AS SCHEDULE, FINANCIAL, PROJECT FEASIBILITY OR THE FACILITATION OF COMBINED USE FACILITIES INTENDED FOR PUBLIC AND PRIVATE PURPOSES, EXPECTED TO BE GAINED FROM AN ALTERNATIVE DELIVERY SYSTEM METHOD OF PROCUREMENT.

(B) AN ALTERNATE DELIVERY SYSTEM CONTRACT SHALL BE AWARDED ONLY IN ACCORDANCE WITH GUIDELINES ADOPTED BY THE AUTHORITY. SUCH GUIDELINES SHALL AT A MINIMUM REQUIRE THE AUTHORITY TO:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(1) GENERATE A LIST OF QUALIFIED ENTITIES BASED UPON THE AUTHORITY'S REVIEW OF RESPONSES TO A PUBLICLY ADVERTISED REQUEST FOR QUALIFICATIONS. ANY REQUEST FOR QUALIFICATIONS SHALL INCLUDE A GENERAL DESCRIPTION OF THE PROJECT AND THE SELECTION CRITERIA TO BE USED IN GENERATING THE LIST. THE SELECTION CRITERIA SHALL INCLUDE, BUT NOT BE LIMITED TO: QUALIFICATIONS AND EXPERIENCE; PROJECT APPROACH; ORGANIZATION; RECORD OF PERFORMANCE; FINANCIAL CAPACITY; DEMONSTRATED ABILITY TO COMPLY WITH APPLICABLE REQUIREMENTS; STATUS AS A MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE CERTIFIED UNDER ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW OR ITS RECORD OF UTILIZATION OF SUCH CERTIFIED ENTERPRISES IN OTHER PROJECTS COMPLETED BY THE ENTITY; RECORD OF UTILIZATION OF SMALL AND OTHER NEW YORK STATE BUSINESS ENTERPRISES IN OTHER PROJECTS COMPLETED BY THE ENTITY; AND SUCH OTHER CRITERIA AS THE AUTHORITY DEEMS APPROPRIATE.

(2) EVALUATE AND RATE, IN WRITING, ALL ENTITIES RESPONDING TO THE REQUEST FOR QUALIFICATIONS AND DOCUMENT THE EVALUATION PROCESS AND BASED UPON SUCH RATINGS, PREPARE A LIST OF AT LEAST THREE ENTITIES THAT SHALL RECEIVE A REQUEST FOR PROPOSALS. IF ANY SUCH ENTITY ON THE LIST CONSISTS OF A TEAM OF SEPARATE ENTITIES, THE TEAM RESPONDING TO THE REQUEST FOR PROPOSALS MUST REMAIN UNCHANGED FROM THE TEAM ON THE LIST UNLESS OTHERWISE APPROVED BY THE AUTHORITY.

(3) ISSUE A REQUEST FOR PROPOSALS TO THE LIST OF ENTITIES ESTABLISHED PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH. THE REQUEST FOR PROPOSALS SHALL SET FORTH THE PROJECT'S SCOPE OF WORK AND OTHER REQUIREMENTS AS DETERMINED BY THE AUTHORITY AND SHALL SPECIFY THE CRITERIA THE CORPORATION WILL USE TO EVALUATE THE PROPOSALS. THE CRITERIA SHALL INCLUDE: (I) THE COST, UNLESS THE REQUEST FOR PROPOSALS SPECIFIES THE PROJECT COST; (II) THE QUALITY OF THE PROPOSAL'S SOLUTION; (III) THE QUALIFICATIONS AND EXPERIENCE OF THE ENTITY OR ENTITIES; (IV) THE EXTENT TO WHICH THE PROPOSAL COMMITS TO ACHIEVE ACTIVE PARTICIPATION BY SMALL AND OTHER NEW YORK STATE BUSINESS ENTERPRISES AND BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES CERTIFIED UNDER ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW (WHICH COMMITMENT MAY INCLUDE JOINT VENTURES, PARTNERING, MENTORING OR OTHER SIMILAR TYPES OF ARRANGEMENTS); (V) THE EXPERIENCE AND PAST PERFORMANCE OF THE ENTITY OR ENTITIES SUBMITTING THE PROPOSALS; AND (VI) OTHER FACTORS DEEMED PERTINENT BY THE AUTHORITY, SUCH AS THE PROPOSAL FOR PROJECT IMPLEMENTATION, THE ENTITY'S ABILITY TO COMPLETE THE WORK IN A TIMELY AND SATISFACTORY MANNER AND THE LIFE-CYCLE COSTING OF THE COMPLETED PROJECT. FOR ANY DESIGN BUILD CONTRACT, THE RESPONSE TO THE REQUEST FOR QUALIFICATIONS SHALL ALSO SET FORTH THE LEGAL RELATIONSHIP BETWEEN THE PROVIDER OF CONSTRUCTION SERVICES AND THE PROVIDER OF DESIGN SERVICES AND DEMONSTRATE HOW THE PROPOSAL COMPLIES WITH THE REQUIREMENTS OF PARAGRAPH (E) OF THIS SUBDIVISION.

(4) SELECT AND ADEQUATELY DOCUMENT ITS RATIONALE FOR SELECTION OF THE SUCCESSFUL ALTERNATIVE DELIVERY SYSTEM CONTRACTOR THAT SUBMITS THE PROPOSAL WHICH, IN CONSIDERATION OF THE CRITERIA DEEMED PERTINENT TO THE PROJECT AS SET FORTH IN THE REQUEST FOR PROPOSALS (TAKING INTO ACCOUNT THE WEIGHTING FACTORS ESTABLISHED BY THE AUTHORITY FOR EACH CRITERIA), IS THE BEST VALUE TO THE AUTHORITY. THE WEIGHTING FACTOR ASSIGNED TO EACH CRITERION SHALL BE ESTABLISHED BY THE AUTHORITY PRIOR TO THE ISSUANCE OF THE REQUEST FOR PROPOSALS BY THE AUTHORITY. THE AUTHORITY SHALL RESERVE THE RIGHT TO NEGOTIATE WITH THE SELECTED ENTITY ANY TERMS OF THE CONTRACT PRIOR TO CONTRACT EXECUTION.

(C) THE AUTHORITY SHALL, IN THE ANNUAL REPORT ON PROCUREMENT CONTRACTS REQUIRED BY SECTION TWENTY-EIGHT HUNDRED SEVENTY-NINE OF THIS CHAPTER, INCLUDE A SEPARATE DESCRIPTION OF EACH ALTERNATIVE DELIVERY SYSTEM CONTRACT THAT WAS AWARDED PURSUANT TO THIS SUBDIVISION DURING THE

PRECEDING FISCAL YEAR, TOGETHER WITH A SUMMARY OF THE SPECIFIC BENEFITS THAT THE AUTHORITY EXPECTED TO BE ACHIEVED THROUGH THE USE OF THE ALTERNATIVE DELIVERY SYSTEM METHOD OF PROCUREMENT AND FOR PROJECTS THAT HAVE BEEN COMPLETED, A SUMMARY INDICATING THE EXTENT TO WHICH THE ANTICIPATED BENEFITS WERE ACHIEVED.

(D) THE AUTHORITY SHALL NOT ENTER INTO AN ALTERNATIVE DELIVERY SYSTEM CONTRACT PURSUANT TO THIS SUBDIVISION UNLESS THE AUTHORITY, CONSISTENT WITH THE AUTHORITY'S POLICY GOVERNING THE USE OF PROJECT LABOR AGREEMENTS, DETERMINES TO REQUIRE THE SELECTED ENTITY TO ENTER INTO A PROJECT LABOR AGREEMENT THAT COMPLIES WITH THE REQUIREMENTS OF SECTION TWO HUNDRED TWENTY-TWO OF THE LABOR LAW. THE PROVISIONS OF THIS SUBDIVISION SHALL NOT BE CONSTRUED TO SUPERSEDE SECTION TWO HUNDRED TWENTY OF THE LABOR LAW REQUIRING THE PAYMENT OF PREVAILING WAGES FOR PUBLIC WORKS.

(E) ANY ALTERNATIVE DELIVERY SYSTEM CONTRACT ENTERED INTO PURSUANT TO THIS SUBDIVISION SHALL INCLUDE A CLAUSE REQUIRING THAT ANY PROFESSIONAL SERVICES REGULATED BY ARTICLES ONE HUNDRED FORTY-FIVE, ONE HUNDRED FORTY-SEVEN AND ONE HUNDRED FORTY-EIGHT OF THE EDUCATION LAW BE PERFORMED BY A PROFESSIONAL LICENSED IN ACCORDANCE WITH SUCH ARTICLES.

S 3. Section 1678 of the public authorities law is amended by adding a new subdivision 26 to read as follows:

26. (A) TO ESTABLISH GUIDELINES GOVERNING THE QUALIFICATIONS OF BIDDERS FOR THOSE CONTRACTS FOR THE CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, REHABILITATION, MAINTENANCE, REPAIR, FURNISHING, EQUIPPING OF OR OTHERWISE PROVIDING FOR FACILITIES REQUIRED BY LAW TO BE AWARDED BY THE AUTHORITY TO THE LOWEST RESPONSIBLE BIDDER AFTER ADVERTISING FOR SEALED BIDS. PURSUANT TO SUCH GUIDELINES, THE BIDDING MAY BE RESTRICTED TO THOSE WHO HAVE QUALIFIED PRIOR TO THE RECEIPT OF BIDS ACCORDING TO STANDARDS FIXED BY THE AUTHORITY IN ACCORDANCE WITH PARAGRAPH (B) OF THIS SUBDIVISION.

(B) IN DETERMINING WHETHER A PROSPECTIVE BIDDER QUALIFIES FOR INCLUSION ON A LIST OF PRE-QUALIFIED BIDDERS, THE AUTHORITY SHALL CONSIDER (I) THE EXPERIENCE AND PAST PERFORMANCE OF THE PROSPECTIVE BIDDER; (II) THE PROSPECTIVE BIDDER'S ABILITY TO UNDERTAKE THE WORK; (III) THE PROSPECTIVE BIDDER'S FINANCIAL AND ORGANIZATIONAL CAPACITY, LEGAL AUTHORITY TO DO BUSINESS IN NEW YORK STATE, INTEGRITY AND PREVIOUS PERFORMANCE; AND (IV) THE PROSPECTIVE BIDDER'S RECORD OF COMPLIANCE WITH ARTICLE FIFTEEN-A OF THE EXECUTIVE LAW. THE AUTHORITY MAY ALSO CONSIDER SUCH OTHER FACTORS AS IT DEEMS APPROPRIATE.

(C) THE AUTHORITY SHALL PUBLISH QUARTERLY IN THE NEW YORK STATE PROCUREMENT OPPORTUNITIES NEWSLETTER, AN ADVERTISEMENT REQUESTING PROSPECTIVE BIDDERS TO SUBMIT QUALIFICATION STATEMENTS. THE AUTHORITY SHALL REVIEW AND UPDATE, NOT LESS THAN ANNUALLY, LISTS OF PRE-QUALIFIED BIDDERS. THE AUTHORITY MAY DELETE FROM THE LIST OF PRE-QUALIFIED BIDDERS ANY BIDDER WHO HAS FAILED TO PERFORM ADEQUATELY OR SATISFACTORILY FOR THE AUTHORITY OR ANY OTHER STATE AGENCY OR PUBLIC CORPORATION OR WHO OTHERWISE FAILS TO MEET ANY OF THE CRITERIA ENUMERATED IN PARAGRAPH (B) OF THIS SUBDIVISION. THE AUTHORITY SHALL PROVIDE WRITTEN NOTICE TO ANY BIDDER PROPOSED TO BE DELETED FROM THE LIST OF PRE-QUALIFIED BIDDERS OF THE REASONS FOR THE PROPOSED DELETION AND UPON THE WRITTEN REQUEST OF ANY SUCH BIDDER, THE AUTHORITY SHALL PROVIDE SAID BIDDER WITH AN OPPORTUNITY TO EXPLAIN WHY THE DELETION SHOULD NOT OCCUR.

(D) LISTS OF PRE-QUALIFIED BIDDERS MAY BE ESTABLISHED ON A PROJECT-SPECIFIC BASIS; PROVIDED, HOWEVER, FOR PROJECTS IN EXCESS OF FIVE MILLION DOLLARS, THE AUTHORITY SHALL FIRST PUBLISH IN THE NEW YORK STATE PROCUREMENT OPPORTUNITIES NEWSLETTER AN ADVERTISEMENT REQUESTING PROSPECTIVE BIDDERS TO SUBMIT QUALIFICATION STATEMENTS IF THEY HAVE NOT

PREVIOUSLY SUBMITTED THEIR QUALIFICATIONS PURSUANT TO PARAGRAPH (C) OF THIS SUBDIVISION AND PROVIDED FURTHER THAT ANY SUCH LIST SHALL HAVE NO LESS THAN THREE BIDDERS.

S 4. This act shall take effect immediately; provided however, that sections one and two of this act shall expire July 30, 2013 when upon such date the provisions of such sections shall be deemed repealed; provided further, that the expiration of such sections of this act shall not impair or otherwise affect the validity of any alternative delivery system contract executed by the dormitory authority and other parties thereto prior to such expiration date.