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

1147

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO, MORELLE, DelMONTE -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to prequalification of bidders on public works projects

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

Section 1. Subdivision 15 of section 103 of the general municipal law, as added by section 1-a of part MM of chapter 57 of the laws of 2008, is amended to read as follows:

15. (a) Notwithstanding any general, special or local law or rule or regulation to the contrary, an officer, board or agency of any [county, any school district or any political subdivision of the state with a population of fifty thousand or more charged with awarding a contract for public work] CITY WITH A POPULATION OF ONE MILLION OR MORE may establish guidelines governing the qualifications of bidders seeking to bid or enter into [such] contracts FOR PUBLIC WORK. If such officer, board or agency maintains an appropriate list of qualified bidders, the bidding shall be restricted to those who have qualified prior to the receipt of bids according to standards fixed by such officer, board or agency. In determining whether a prospective bidder qualifies for inclusion on a list of pre-qualified bidders, the officer, board or agency shall consider the experience and record of performance of the prospective bidder in the particular type of work, as well as: (i) the prospective bidder's ability to undertake the particular type and complexity of work; (ii) the financial capability, responsibility and reliability of the prospective bidder for such type and complexity of work; (iii) the record of the prospective bidder in complying with existing labor standards and maintaining harmonious labor relations; (iv) the prospective bidder's compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with

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

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minority and women-owned businesses through joint ventures or subcontractor relationships; and (v) the record of the prospective bidder in protecting the health and safety of workers on public works projects and job sites as demonstrated by the prospective bidder's experience modification rate for each of the last three years.

(b) Such public officer, board or agency shall, not less than annually, publish in a newspaper of general circulation in such political subdivision an advertisement requesting prospective bidders to submit qualification statements. Lists of pre-qualified bidders may be established on a project-specific basis. [Prequalified] PRE-QUALIFIED lists shall include all bidders that qualify; provided, however, that any such list shall have no less than five bidders but shall remain open for all additional qualified bidders. The public officer, board or agency's procedures for prequalifying bidders shall include an appeals process for those denied a place on a pre-qualified list. Any denial must be based upon substantial evidence, cannot be arbitrary or capricious, and shall be subject to judicial review pursuant to article seventy-eight of the civil practice law and rules. The public officer, board or agency may move forward on the contract award during such appeals.

[(c) Any school district or political subdivision of the state with a population of less than fifty thousand may utilize a list of pre-qualified bidders maintained by the county within which the subdivision is located, if such list is maintained.]

S 2. This act shall take effect immediately.