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

7080

2011-2012 Regular Sessions

I N A S S E M B L Y

April 12, 2011

Introduced by M. of A. J. MILLER, CROUCH, McDONOUGH, THIELE -- Multi-Sponsored by -- M. of A. HAWLEY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to state procurement contracts

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

Section 1. Paragraph c of subdivision 2 of section 163 of the state finance law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

c. To encourage the investment of the private and not-for-profit sectors in New York state by making reasonable efforts to ensure that offerers are apprised of procurement opportunities; by specifying the elements of a responsive bid and disclosing the process for awarding contracts including, if applicable, the relative importance and/or weight of cost and the overall technical criterion for evaluating offers; BY EVALUATING RESPONSIVE BIDS IN SUCH A MANNER AS WILL REFLECT AND ADJUST FOR SUCH UNAVOIDABLE COSTS OF DOING BUSINESS AS ARE IMPOSED UPON SUCH BUSINESSES BY THEIR RESPECTIVE STATE GOVERNMENTS; and by ensuring the procurement is conducted accordingly.

S 2. Subdivision 10 of section 163 of the state finance law is amended by adding a new paragraph g to read as follows:

G. THE COMMISSIONER, WITH THE ASSISTANCE OF THE STATE PROCUREMENT COUNCIL, IS DIRECTED TO ESTABLISH A METHODOLOGY OF EVALUATING ALL RESPONSIVE BIDS IN SUCH A MANNER AS WILL REFLECT AND ADJUST FOR SUCH UNAVOIDABLE COSTS OF DOING BUSINESS AS ARE IMPOSED UPON SUCH BUSINESSES BY THEIR RESPECTIVE STATE GOVERNMENTS. ONLY SUCH COSTS OF DOING BUSINESS AS MAY BE DIRECTLY ATTRIBUTED TO TAXES, FEES, INSURANCE SUCH AS WORKER COMPENSATION AND OTHER DIRECT COSTS IMPOSED UPON A RESPONSIVE BIDDER BY THEIR RESPECTIVE STATE GOVERNMENT SHALL BE CONSIDERED IN SUCH A METHODOLOGY. ALL FACTORS RELATED TO LOCAL GOVERNMENT IMPOSITIONS, AND ANY AND

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

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ALL OTHER ECONOMIC OR OTHER NON-GOVERNMENT RELATED COSTS SHALL NOT BE INCLUDED IN SUCH A METHODOLOGY. THIS METHODOLOGY SHALL NOT BE CONSTRUED AS COMPRISING AN UNFAIR PREFERENCE IN FAVOR OF NEW YORK BUSINESSES, AND SHALL BE DETERMINED BY THE COMMISSIONER AND THE STATE PROCUREMENT COUNCIL IN SUCH A FASHION AS TO BE FAIR AND NON-DISCRIMINATORY TOWARDS BOTH NEW YORK AND OUT OF STATE BIDDERS. ALL RESPONSIVE BIDDERS SHALL BE EQUALLY ENTITLED AND REQUIRED TO HAVE THE TOTAL AMOUNTS OF THEIR FINAL BID ADJUSTED AFTER SUBMISSION TO REFLECT SUCH STATE GOVERNMENT IMPOSED COSTS IN SUCH FORM AS SHALL BE DETERMINED BY THE COMMISSIONER, WITH THE ASSISTANCE OF THE STATE PROCUREMENT COUNCIL, WITH THE FINAL BID DETERMINATION TO BE MADE REFLECTIVE OF THIS ADJUSTED FIGURE.

S 3. This act shall take effect immediately; provided, however, that the amendments to paragraph c of subdivision 2 of section 163 of the state finance law and the amendments to subdivision 10 of section 163 of the state finance law made by sections one and two of this act shall not affect the repeal of such section and shall be deemed repealed therewith.