

8946

I N A S S E M B L Y

March 4, 2014

Introduced by M. of A. RAIA -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to school lunch procurement and request for proposals

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

1 Section 1. Section 305 of the education law is amended by adding a new
2 subdivision 44 to read as follows:

3 44. ALL CONTRACTS TO PROVIDE, MAINTAIN AND OPERATE CAFETERIA OR
4 RESTAURANT SERVICE BY A PRIVATE FOOD SERVICE MANAGEMENT COMPANY SHALL BE
5 AWARDED THROUGH A REQUEST FOR PROPOSAL PROCUREMENT PROCESS. ALL
6 PROPOSALS SHALL BE IN SUCH FORM AS THE COMMISSIONER MAY PRESCRIBE AND
7 SHALL INCLUDE CRITERIA SUCH AS QUALITY, COST AND NUTRITION OF FOOD. EACH
8 SCHOOL DISTRICT SHALL AWARD A PRIVATE FOOD SERVICE MANAGEMENT COMPANY
9 WITH A COST REIMBURSABLE CONTRACT WHICH WILL ALLOW EACH SCHOOL DISTRICT
10 THE FLEXIBILITY TO MODIFY THEIR SCHOOL NUTRITION PROGRAM DURING THE
11 CONTRACT PERIOD.

12 S 2. Paragraph a of subdivision 14 of section 305 of the education
13 law, as amended by section 1 of chapter 273 of the laws of 1999, is
14 amended to read as follows:

15 a. All contracts for the transportation of school children, all
16 contracts to maintain school buses owned or leased by a school district
17 that are used for the transportation of school children[,] AND all
18 contracts for mobile instructional units[, and all contracts to provide,
19 maintain and operate cafeteria or restaurant service by a private food
20 service management company] shall be subject to the approval of the
21 commissioner, who may disapprove a proposed contract if, in his opinion,
22 the best interests of the district will be promoted thereby. Except as
23 provided in paragraph e of this subdivision, all such contracts involv-
24 ing an annual expenditure in excess of the amount specified for purchase
25 contracts in the bidding requirements of the general municipal law shall
26 be awarded to the lowest responsible bidder, which responsibility shall
27 be determined by the board of education or the trustee of a district,
28 with power hereby vested in the commissioner to reject any or all bids

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

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1 if, in his opinion, the best interests of the district will be promoted
2 thereby and, upon such rejection of all bids, the commissioner shall
3 order the board of education or trustee of the district to seek, obtain
4 and consider new proposals. All proposals for such transportation, main-
5 tenance[,] OR mobile instructional units[, or cafeteria and restaurant
6 service] shall be in such form as the commissioner may prescribe.
7 Advertisement for bids shall be published in a newspaper or newspapers
8 designated by the board of education or trustee of the district having
9 general circulation within the district for such purpose. Such adver-
10 tisement shall contain a statement of the time when and place where all
11 bids received pursuant to such advertisement will be publicly opened and
12 read either by the school authorities or by a person or persons desig-
13 nated by them. All bids received shall be publicly opened and read at
14 the time and place so specified. At least five days shall elapse between
15 the first publication of such advertisement and the date so specified
16 for the opening and reading of bids. The requirement for competitive
17 bidding shall not apply to an award of a contract for the transportation
18 of pupils or a contract for mobile instructional units, if such award is
19 based on an evaluation of proposals in response to a request for
20 proposals pursuant to paragraph e of this subdivision. The requirement
21 for competitive bidding shall not apply to annual, biennial, or trienni-
22 al extensions of a contract nor shall the requirement for competitive
23 bidding apply to quadrennial or quinquennial year extensions of a
24 contract involving transportation of pupils, maintenance of school buses
25 or mobile instructional units secured either through competitive bidding
26 or through evaluation of proposals in response to a request for
27 proposals pursuant to paragraph e of this subdivision, when such exten-
28 sions (1) are made by the board of education or the trustee of a
29 district, under rules and regulations prescribed by the commissioner,
30 and, (2) [do not extend the original contract period beyond five years
31 from the date cafeteria and restaurant service commenced thereunder and]
32 in the case of contracts for the transportation of pupils, for the main-
33 tenance of school buses or for mobile instructional units, that such
34 contracts may be extended, except that power is hereby vested in the
35 commissioner, in addition to his existing statutory authority to approve
36 or disapprove transportation or maintenance contracts, (i) to reject any
37 extension of a contract beyond the initial term thereof if he finds that
38 amount to be paid by the district to the contractor in any year of such
39 proposed extension fails to reflect any decrease in the regional consum-
40 er price index for the N.Y., N.Y.-Northeastern, N.J. area, based upon
41 the index for all urban consumers (CPI-U) during the preceding twelve
42 month period; and (ii) to reject any extension of a contract after ten
43 years from the date transportation or maintenance service commenced
44 thereunder, or mobile instructional units were first provided, if in his
45 opinion, the best interests of the district will be promoted thereby.
46 Upon such rejection of any proposed extension, the commissioner may
47 order the board of education or trustee of the district to seek, obtain
48 and consider bids pursuant to the provisions of this section. The board
49 of education or the trustee of a school district electing to extend a
50 contract as provided herein, may, in its discretion, increase the amount
51 to be paid in each year of the contract extension by an amount not to
52 exceed the regional consumer price index increase for the N.Y.,
53 N.Y.-Northeastern, N.J. area, based upon the index for all urban consum-
54 ers (CPI-U), during the preceding twelve month period, provided it has
55 been satisfactorily established by the contractor that there has been at

1 least an equivalent increase in the amount of his cost of operation,
2 during the period of the contract.

3 S 3. Paragraph a of subdivision 14 of section 305 of the education
4 law, as amended by section 2 of chapter 273 of the laws of 1999, is
5 amended to read as follows:

6 a. All contracts for the transportation of school children[,] AND all
7 contracts to maintain school buses owned or leased by a school district
8 that are used for the transportation of school children, all contracts
9 for mobile instructional units[, and all contracts to provide, maintain
10 and operate cafeteria or restaurant service by a private food service
11 management company] shall be subject to the approval of the commission-
12 er, who may disapprove a proposed contract if, in his opinion, the best
13 interests of the district will be promoted thereby. All such contracts
14 involving an annual expenditure in excess of the amount specified for
15 purchase contracts in the bidding requirements of the general municipal
16 law shall be awarded to the lowest responsible bidder, which responsi-
17 bility shall be determined by the board of education or the trustee of a
18 district, with power hereby vested in the commissioner to reject any or
19 all bids if, in his opinion, the best interests of the district will be
20 promoted thereby and, upon such rejection of all bids, the commissioner
21 shall order the board of education or trustee of the district to seek,
22 obtain and consider new proposals. All proposals for such transporta-
23 tion, maintenance[,] OR mobile instructional units[, or cafeteria and
24 restaurant service] shall be in such form as the commissioner may
25 prescribe. Advertisement for bids shall be published in a newspaper or
26 newspapers designated by the board of education or trustee of the
27 district having general circulation within the district for such
28 purpose. Such advertisement shall contain a statement of the time when
29 and place where all bids received pursuant to such advertisement will be
30 publicly opened and read either by the school authorities or by a person
31 or persons designated by them. All bids received shall be publicly
32 opened and read at the time and place so specified. At least five days
33 shall elapse between the first publication of such advertisement and the
34 date so specified for the opening and reading of bids. The requirement
35 for competitive bidding shall not apply to annual, biennial, or trienni-
36 al extensions of a contract nor shall the requirement for competitive
37 bidding apply to quadrennial or quinquennial year extensions of a
38 contract involving transportation of pupils, maintenance of school buses
39 or mobile instructional units secured through competitive bidding when
40 such extensions (1) are made by the board of education or the trustee of
41 a district, under rules and regulations prescribed by the commissioner,
42 and, (2) [do not extend the original contract period beyond five years
43 from the date cafeteria and restaurant service commenced thereunder and]
44 in the case of contracts for the transportation of pupils, for the main-
45 tenance of school buses or for mobile instructional units, that such
46 contracts may be extended, except that power is hereby vested in the
47 commissioner, in addition to his existing statutory authority to approve
48 or disapprove transportation or maintenance contracts, (i) to reject any
49 extension of a contract beyond the initial term thereof if he finds that
50 amount to be paid by the district to the contractor in any year of such
51 proposed extension fails to reflect any decrease in the regional consum-
52 er price index for the N.Y., N.Y.-Northeastern, N.J. area, based upon
53 the index for all urban consumers (CPI-U) during the preceding twelve
54 month period; and (ii) to reject any extension of a contract after ten
55 years from the date transportation or maintenance service commenced
56 thereunder, or mobile instructional units were first provided, if in his

1 opinion, the best interests of the district will be promoted thereby.
2 Upon such rejection of any proposed extension, the commissioner may
3 order the board of education or trustee of the district to seek, obtain
4 and consider bids pursuant to the provisions of this section. The board
5 of education or the trustee of a school district electing to extend a
6 contract as provided herein, may, in its discretion, increase the amount
7 to be paid in each year of the contract extension by an amount not to
8 exceed the regional consumer price index increase for the N.Y.,
9 N.Y.-Northeastern, N.J. area, based upon the index for all urban consum-
10 ers (CPI-U), during the preceding twelve month period, provided it has
11 been satisfactorily established by the contractor that there has been at
12 least an equivalent increase in the amount of his cost of operation,
13 during the period of the contract.

14 S 4. This act shall take effect immediately, provided that the amend-
15 ments to paragraph a of subdivision 14 of section 305 of the education
16 law made by section two of this act shall be subject to the expiration
17 and reversion of such paragraph pursuant to chapter 698 of the laws of
18 1996, as amended, when upon such date the provisions of section three of
19 this act shall take effect.