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

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I N A S S E M B L Y

May 15, 2014

Introduced by M. of A. ENGLEBRIGHT -- (at request of the State Comptroller) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to reports on centralized contracts and authorizing alternative procurement methods

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

Section 1. Paragraph (a) of subdivision 2 of section 112 of the state finance law, as amended by section 18 of part L of chapter 55 of the laws of 2012, is amended to read as follows:

(a) Before any contract made for or by any state agency, department, board, officer, commission, or institution, except the office of general services, shall be executed or become effective, whenever such contract exceeds fifty thousand dollars in amount and before any contract made for or by the office of general services shall be executed or become effective, whenever such contract exceeds eighty-five thousand dollars in amount, it shall first be approved by the comptroller and filed in his or her office, with the exception of contracts established as a centralized contract through the office of general services [and purchase orders or other procurement transactions issued under such centralized contracts] THAT WERE NOT AWARDED AS THE RESULT OF AN ALTERNATIVE PROCUREMENT. The comptroller shall make a final written determination with respect to approval of such contract within ninety days of the submission of such contract to his or her office unless the comptroller shall notify, in writing, the state agency, department, board, officer, commission, or institution, prior to the expiration of the ninety day period, and for good cause, of the need for an extension of not more than fifteen days, or a reasonable period of time agreed to by such state agency, department, board, officer, commission, or institution and provided, further, that such written determination or extension shall be made part of the procurement record pursuant to paragraph f of subdivision one of section one hundred sixty-three of this chapter.

S 2. Section 163 of the state finance law is amended by adding a new subdivision 15 to read as follows:

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

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15. ALTERNATIVE PROCUREMENT METHODS. A. WHEN THE COMMISSIONER OR A STATE AGENCY DETERMINES THAT IT IS IN THE BEST INTEREST OF THE STATE TO DEVELOP AN ALTERNATIVE PROCUREMENT METHOD NOT AUTHORIZED BY THIS ARTICLE FOR GOODS, SERVICES OR TECHNOLOGY, THE COMMISSIONER OR STATE AGENCY IS HEREBY AUTHORIZED TO DEVELOP AND USE SUCH METHOD FOR A SPECIFIC CONTRACT AWARD. SUCH DETERMINATION SHALL BE MADE IN WRITING AND SHALL INCLUDE DOCUMENTATION FOR THE PROCUREMENT RECORD THAT SUCH ALTERNATIVE PROCUREMENT METHOD: (I) WOULD SERVE THE INTEREST OF THE STATE BETTER THAN OTHER METHODS CURRENTLY AVAILABLE UNDER THIS SECTION; (II) CAN BE APPLIED ON A COMPETITIVE, FAIR AND EQUITABLE BASIS; AND (III) CONTAINS AN APPROPRIATE EVALUATION METHODOLOGY THAT CONSIDERS BOTH COST AND QUALITATIVE EVALUATION FACTORS. SUCH ALTERNATIVE PROCUREMENT METHOD SHALL BE SUBJECT TO ALL OTHER APPLICABLE PROVISIONS OF THIS SECTION. THE COMMISSIONER OR A STATE AGENCY MAY NOT UNDERTAKE AN ALTERNATIVE PROCUREMENT METHOD UNTIL THE COMPTROLLER HAS DETERMINED THAT THE PROPOSED ALTERNATIVE PROCUREMENT METHOD IS IN THE BEST INTEREST OF THE STATE; CAN BE APPLIED ON A COMPETITIVE, FAIR AND EQUITABLE BASIS; AND UTILIZES AN APPROPRIATE EVALUATION METHODOLOGY THAT CONSIDERS BOTH COST AND QUALITATIVE EVALUATION FACTORS.

B. WHEN USING AN ALTERNATIVE PROCUREMENT METHOD AUTHORIZED BY THIS SUBDIVISION, THE COMMISSIONER OR AGENCY SHALL INCLUDE IN ITS SOLICITATION DOCUMENT A DETAILED DESCRIPTION OF THE PROPOSED METHOD OF AWARD. IN ADVANCE OF THE INITIAL RECEIPT OF OFFERS, THE COMMISSIONER OR STATE AGENCY SHALL DETERMINE AND DOCUMENT IN THE PROCUREMENT RECORD THE EVALUATION CRITERIA AND PROCESS TO BE USED IN THE DETERMINATION OF THE SPECIFIC CONTRACT AWARD AND THE PROCESS BY WHICH THE EVALUATION AND SELECTION SHALL BE CONDUCTED. IN ADDITION TO THE REQUIREMENTS SET FORTH IN PARAGRAPH G OF SUBDIVISION NINE OF THIS SECTION, THE PROCUREMENT RECORD SHALL DOCUMENT THE BASIS UPON WHICH THE AGENCY HAS DETERMINED THAT POTENTIAL VENDORS WILL BE ABLE TO RESPOND WITH VIABLE BIDS TO SUCH ALTERNATIVE PROCUREMENT.

C. NOTWITHSTANDING ANY PROVISION OF SUBDIVISION FIVE OF SECTION THREE HUNDRED FIFTY-FIVE TO THE CONTRARY OR SECTION SIXTY-TWO HUNDRED EIGHTEEN OF THE EDUCATION LAW, BEFORE ANY CONTRACT AWARDED UNDER AN ALTERNATIVE PROCUREMENT WHICH EXCEEDS FIFTY THOUSAND DOLLARS IN AMOUNT BECOMES EFFECTIVE IT MUST BE APPROVED BY THE COMPTROLLER AND FILED IN HIS OR HER OFFICE.

D. FOR EACH ALTERNATIVE PROCUREMENT AWARDED, THE COMMISSIONER OR STATE AGENCY SHALL SUBMIT TO THE GOVERNOR, THE COMPTROLLER AND THE HEADS OF THE FISCAL COMMITTEES OF EACH HOUSE OF THE STATE LEGISLATURE NO LATER THAN THE MID-POINT OF THE INITIAL TERM OF THE RESULTANT CONTRACT A REPORT ASSESSING THE VALIDITY OF THE ALTERNATIVE PROCUREMENT METHOD AND COMPARING ITS RESULTS TO STANDARD PROCUREMENT METHODS FOR GOODS, SERVICES OR TECHNOLOGY.

E. THE COMMISSIONER OF GENERAL SERVICES SHALL PREPARE A REPORT ON THE SAVINGS ACHIEVED FROM ALL CONTRACTS ESTABLISHED AS A CENTRALIZED CONTRACT THROUGH THE OFFICE OF GENERAL SERVICES PURSUANT TO THIS SECTION, THE IMPACT OF SUCH CONTRACTS ON SMALL, MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES, AND THE EFFECTIVENESS OF SUCH CONTRACTS IN FULFILLING THE PURCHASING NEEDS OF ALL AUTHORIZED USERS OF SUCH CONTRACTS. SUCH REPORT SHALL BE SUBMITTED BY SUCH COMMISSIONER TO THE GOVERNOR, THE STATE COMPTROLLER, AND THE HEADS OF THE FISCAL COMMITTEES OF EACH HOUSE OF THE STATE LEGISLATURE NO LATER THAN JANUARY FIFTEENTH, TWO THOUSAND FIFTEEN, AND THEREAFTER ANNUALLY ON OR BEFORE SUCH DATE.

S 3. This act shall take effect immediately; provided, however, that the amendments to section 163 of the state finance law made by section

two of this act shall not affect the repeal of such section and shall be deemed repealed therewith.