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

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:

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

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

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

a. All contracts for the transportation of school children, all contracts to maintain school buses owned or leased by a school district that are used for the transportation of school children[,] AND all contracts for mobile instructional units[, and all contracts to provide, maintain and operate cafeteria or restaurant service by a private food service management company] shall be subject to the approval of the commissioner, who may disapprove a proposed contract if, in his opinion, the best interests of the district will be promoted thereby. Except as provided in paragraph e of this subdivision, all such contracts involving an annual expenditure in excess of the amount specified for purchase contracts in the bidding requirements of the general municipal law shall be awarded to the lowest responsible bidder, which responsibility shall be determined by the board of education or the trustee of a district, 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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if, in his opinion, the best interests of the district will be promoted thereby and, upon such rejection of all bids, the commissioner shall order the board of education or trustee of the district to seek, obtain and consider new proposals. All proposals for such transportation, maintenance[,] OR mobile instructional units[, or cafeteria and restaurant service] shall be in such form as the commissioner may prescribe. Advertisement for bids shall be published in a newspaper or newspapers designated by the board of education or trustee of the district having general circulation within the district for such purpose. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such advertisement will be publicly opened and read either by the school authorities or by a person or persons designated by them. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of bids. The requirement for competitive bidding shall not apply to an award of a contract for the transportation of pupils or a contract for mobile instructional units, if such award is based on an evaluation of proposals in response to a request for proposals pursuant to paragraph e of this subdivision. The requirement for competitive bidding shall not apply to annual, biennial, or triennial extensions of a contract nor shall the requirement for competitive bidding apply to quadrennial or quinquennial year extensions of a contract involving transportation of pupils, maintenance of school buses or mobile instructional units secured either through competitive bidding or through evaluation of proposals in response to a request for proposals pursuant to paragraph e of this subdivision, when such extensions (1) are made by the board of education or the trustee of a district, under rules and regulations prescribed by the commissioner, and, (2) [do not extend the original contract period beyond five years from the date cafeteria and restaurant service commenced thereunder and] in the case of contracts for the transportation of pupils, for the maintenance of school buses or for mobile instructional units, that such contracts may be extended, except that power is hereby vested in the commissioner, in addition to his existing statutory authority to approve or disapprove transportation or maintenance contracts, (i) to reject any extension of a contract beyond the initial term thereof if he finds that amount to be paid by the district to the contractor in any year of such proposed extension fails to reflect any decrease in the regional consumer price index for the N.Y., N.Y.-Northeastern, N.J. area, based upon the index for all urban consumers (CPI-U) during the preceding twelve month period; and (ii) to reject any extension of a contract after ten years from the date transportation or maintenance service commenced thereunder, or mobile instructional units were first provided, if in his opinion, the best interests of the district will be promoted thereby. Upon such rejection of any proposed extension, the commissioner may order the board of education or trustee of the district to seek, obtain and consider bids pursuant to the provisions of this section. The board of education or the trustee of a school district electing to extend a contract as provided herein, may, in its discretion, increase the amount to be paid in each year of the contract extension by an amount not to exceed the regional consumer price index increase for the N.Y., N.Y.-Northeastern, N.J. area, based upon the index for all urban consumers (CPI-U), during the preceding twelve month period, provided it has been satisfactorily established by the contractor that there has been at

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

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

a. All contracts for the transportation of school children[,] AND all contracts to maintain school buses owned or leased by a school district that are used for the transportation of school children, all contracts for mobile instructional units[, and all contracts to provide, maintain and operate cafeteria or restaurant service by a private food service management company] shall be subject to the approval of the commissioner, who may disapprove a proposed contract if, in his opinion, the best interests of the district will be promoted thereby. All such contracts involving an annual expenditure in excess of the amount specified for purchase contracts in the bidding requirements of the general municipal law shall be awarded to the lowest responsible bidder, which responsibility shall be determined by the board of education or the trustee of a district, with power hereby vested in the commissioner to reject any or all bids if, in his opinion, the best interests of the district will be promoted thereby and, upon such rejection of all bids, the commissioner shall order the board of education or trustee of the district to seek, obtain and consider new proposals. All proposals for such transportation, maintenance[,] OR mobile instructional units[, or cafeteria and restaurant service] shall be in such form as the commissioner may prescribe. Advertisement for bids shall be published in a newspaper or newspapers designated by the board of education or trustee of the district having general circulation within the district for such purpose. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such advertisement will be publicly opened and read either by the school authorities or by a person or persons designated by them. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of bids. The requirement for competitive bidding shall not apply to annual, biennial, or triennial extensions of a contract nor shall the requirement for competitive bidding apply to quadrennial or quinquennial year extensions of a contract involving transportation of pupils, maintenance of school buses or mobile instructional units secured through competitive bidding when such extensions (1) are made by the board of education or the trustee of a district, under rules and regulations prescribed by the commissioner, and, (2) [do not extend the original contract period beyond five years from the date cafeteria and restaurant service commenced thereunder and] in the case of contracts for the transportation of pupils, for the maintenance of school buses or for mobile instructional units, that such contracts may be extended, except that power is hereby vested in the commissioner, in addition to his existing statutory authority to approve or disapprove transportation or maintenance contracts, (i) to reject any extension of a contract beyond the initial term thereof if he finds that amount to be paid by the district to the contractor in any year of such proposed extension fails to reflect any decrease in the regional consumer price index for the N.Y., N.Y.-Northeastern, N.J. area, based upon the index for all urban consumers (CPI-U) during the preceding twelve month period; and (ii) to reject any extension of a contract after ten years from the date transportation or maintenance service commenced thereunder, or mobile instructional units were first provided, if in his

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

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