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I N S E N A T E

May 12, 2014

Introduced by Sen. MARCELLINO -- (at request of the State Comptroller)
-- read twice and ordered printed, and when printed to be committed to
the Committee on Infrastructure and Capital Investment

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 2 of section 112 of the state
2 finance law, as amended by section 18 of part L of chapter 55 of the
3 laws of 2012, is amended to read as follows:
4 (a) Before any contract made for or by any state agency, department,
5 board, officer, commission, or institution, except the office of general
6 services, shall be executed or become effective, whenever such contract
7 exceeds fifty thousand dollars in amount and before any contract made
8 for or by the office of general services shall be executed or become
9 effective, whenever such contract exceeds eighty-five thousand dollars
10 in amount, it shall first be approved by the comptroller and filed in
11 his or her office, with the exception of contracts established as a
12 centralized contract through the office of general services [and
13 purchase orders or other procurement transactions issued under such
14 centralized contracts] THAT WERE NOT AWARDED AS THE RESULT OF AN ALTER-
15 NATIVE PROCUREMENT. The comptroller shall make a final written determi-
16 nation with respect to approval of such contract within ninety days of
17 the submission of such contract to his or her office unless the comp-
18 troller shall notify, in writing, the state agency, department, board,
19 officer, commission, or institution, prior to the expiration of the
20 ninety day period, and for good cause, of the need for an extension of
21 not more than fifteen days, or a reasonable period of time agreed to by
22 such state agency, department, board, officer, commission, or institu-
23 tion and provided, further, that such written determination or extension
24 shall be made part of the procurement record pursuant to paragraph f of
25 subdivision one of section one hundred sixty-three of this chapter.
26 S 2. Section 163 of the state finance law is amended by adding a new
27 subdivision 15 to read as follows:
28 15. ALTERNATIVE PROCUREMENT METHODS. A. WHEN THE COMMISSIONER OR A
29 STATE AGENCY DETERMINES THAT IT IS IN THE BEST INTEREST OF THE STATE TO
30 DEVELOP AN ALTERNATIVE PROCUREMENT METHOD NOT AUTHORIZED BY THIS ARTICLE

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

LBD14058-02-4

1 FOR GOODS, SERVICES OR TECHNOLOGY, THE COMMISSIONER OR STATE AGENCY IS
2 HEREBY AUTHORIZED TO DEVELOP AND USE SUCH METHOD FOR A SPECIFIC CONTRACT
3 AWARD. SUCH DETERMINATION SHALL BE MADE IN WRITING AND SHALL INCLUDE
4 DOCUMENTATION FOR THE PROCUREMENT RECORD THAT SUCH ALTERNATIVE PROCURE-
5 MENT METHOD: (I) WOULD SERVE THE INTEREST OF THE STATE BETTER THAN OTHER
6 METHODS CURRENTLY AVAILABLE UNDER THIS SECTION; (II) CAN BE APPLIED ON A
7 COMPETITIVE, FAIR AND EQUITABLE BASIS; AND (III) CONTAINS AN APPROPRIATE
8 EVALUATION METHODOLOGY THAT CONSIDERS BOTH COST AND QUALITATIVE EVALU-
9 ATION FACTORS. SUCH ALTERNATIVE PROCUREMENT METHOD SHALL BE SUBJECT TO
10 ALL OTHER APPLICABLE PROVISIONS OF THIS SECTION. THE COMMISSIONER OR A
11 STATE AGENCY MAY NOT UNDERTAKE AN ALTERNATIVE PROCUREMENT METHOD UNTIL
12 THE COMPTROLLER HAS DETERMINED THAT THE PROPOSED ALTERNATIVE PROCUREMENT
13 METHOD IS IN THE BEST INTEREST OF THE STATE; CAN BE APPLIED ON A COMPET-
14 ITIVE, FAIR AND EQUITABLE BASIS; AND UTILIZES AN APPROPRIATE EVALUATION
15 METHODOLOGY THAT CONSIDERS BOTH COST AND QUALITATIVE EVALUATION FACTORS.

16 B. WHEN USING AN ALTERNATIVE PROCUREMENT METHOD AUTHORIZED BY THIS
17 SUBDIVISION, THE COMMISSIONER OR AGENCY SHALL INCLUDE IN ITS SOLICITA-
18 TION DOCUMENT A DETAILED DESCRIPTION OF THE PROPOSED METHOD OF AWARD. IN
19 ADVANCE OF THE INITIAL RECEIPT OF OFFERS, THE COMMISSIONER OR STATE
20 AGENCY SHALL DETERMINE AND DOCUMENT IN THE PROCUREMENT RECORD THE EVALU-
21 ATION CRITERIA AND PROCESS TO BE USED IN THE DETERMINATION OF THE
22 SPECIFIC CONTRACT AWARD AND THE PROCESS BY WHICH THE EVALUATION AND
23 SELECTION SHALL BE CONDUCTED. IN ADDITION TO THE REQUIREMENTS SET FORTH
24 IN PARAGRAPH G OF SUBDIVISION NINE OF THIS SECTION, THE PROCUREMENT
25 RECORD SHALL DOCUMENT THE BASIS UPON WHICH THE AGENCY HAS DETERMINED
26 THAT POTENTIAL VENDORS WILL BE ABLE TO RESPOND WITH VIABLE BIDS TO SUCH
27 ALTERNATIVE PROCUREMENT.

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

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

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

51 S 3. This act shall take effect immediately; provided, however, that
52 the amendments to section 163 of the state finance law made by section
53 two of this act shall not affect the repeal of such section and shall be
54 deemed repealed therewith.