

4504

2015-2016 Regular Sessions

I N A S S E M B L Y

February 3, 2015

Introduced by M. of A. RAIA, DUPREY, MONTESANO, PALUMBO, GOODELL, McDO-
NOUGH, CROUCH, LUPINACCI, FINCH -- Multi-Sponsored by -- M. of A.
HAWLEY, McLAUGHLIN -- read once and referred to the Committee on
Education

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

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

1 Section 1. Section 305 of the education law is amended by adding a new
2 subdivision 53 to read as follows:

3 53. 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 chapter 273 of the laws of 1999, is amended to read
14 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-

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

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

1 exceed the regional consumer price index increase for the N.Y.,
2 N.Y.-Northeastern, N.J. area, based upon the index for all urban consum-
3 ers (CPI-U), during the preceding twelve month period, provided it has
4 been satisfactorily established by the contractor that there has been at
5 least an equivalent increase in the amount of his cost of operation,
6 during the period of the contract.

7 S 3. This act shall take effect immediately.