

3450--B

2015-2016 Regular Sessions

I N   S E N A T E

February 9, 2015

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Introduced by Sen. FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to requiring state agencies to provide certain information to unsuccessful bidders during the debriefing process

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

1     Section 1. Paragraph c of subdivision 9 of section 163 of the state  
2     finance law, as amended by chapter 137 of the laws of 2008, is amended  
3     to read as follows:  
4     c. (I) Where provided in the solicitation, state agencies may require  
5     clarification from offerers for purposes of assuring a full understand-  
6     ing of responsiveness to the solicitation requirements. Where provided  
7     for in the solicitation, revisions may be permitted from all offerers  
8     determined to be susceptible of being selected for contract award, prior  
9     to award. Offerers shall be accorded fair and equal treatment with  
10    respect to their opportunity for discussion and revision of offers. [A]  
11    (II) WITHIN FIFTEEN DAYS OF THE SELECTION OF A WINNING BID BY A STATE  
12    AGENCY AND PRIOR TO THE SUBMISSION FOR APPROVAL OF A CONTRACT TO THE  
13    OFFICE OF THE STATE COMPTROLLER, ALL BIDDERS SHALL BE ADVISED OF THE  
14    COMPLETION OF THE SELECTION PROCESS.  
15    (III) FOR ANY CONTRACT ESTABLISHED AS A CENTRALIZED CONTRACT BY THE  
16    OFFICE OF GENERAL SERVICES, WITHIN FIFTEEN DAYS OF SELECTION OF THE  
17    WINNING BID BY THE OFFICE OF GENERAL SERVICES, ALL BIDDERS SHALL BE  
18    ADVISED OF THE COMPLETION OF THE SELECTION PROCESS.  
19    (IV) THE OPPORTUNITY FOR AN UNSUCCESSFUL BIDDER TO SEEK A DEBRIEFING  
20    SHALL BE STATED IN THE SOLICITATION, WHICH SHALL PROVIDE A REASONABLE  
21    TIME FOR REQUESTING A DEBRIEFING.

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

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1 (V) IN RELATION TO THE AWARD OF ANY CONTRACT WITH A TOTAL VALUE OF  
2 LESS THAN FIVE HUNDRED THOUSAND DOLLARS, A state agency shall, upon  
3 request, provide [a] AN IN-PERSON OR, IF NECESSARY, A VIDEO-CONFERENCED  
4 debriefing to any unsuccessful offerer that responded to a request for  
5 proposal or an invitation for bids, regarding the reasons that the  
6 proposal or bid submitted by the unsuccessful offerer was not selected  
7 for an award. [The opportunity for an unsuccessful offerer to seek a  
8 debriefing shall be stated in the solicitation, which shall provide a  
9 reasonable time for requesting a debriefing.]

10 (VI) IN RELATION TO THE AWARD OF A CONTRACT WITH A TOTAL VALUE OF FIVE  
11 HUNDRED THOUSAND OR MORE DOLLARS, A STATE AGENCY SHALL, UPON REQUEST,  
12 PROVIDE AN IN-PERSON OR, IF NECESSARY, A VIDEO-CONFERENCED DEBRIEFING TO  
13 ANY UNSUCCESSFUL OFFERER THAT RESPONDED TO A REQUEST FOR PROPOSAL OR  
14 INVITATION FOR BIDS. SUCH DEBRIEFING, SHALL INCLUDE, BUT NEED NOT BE  
15 LIMITED TO, THOROUGH WRITTEN EXPLANATIONS OF: (A) THE REASONS THAT THE  
16 PROPOSAL OR BID SUBMITTED BY THE UNSUCCESSFUL OFFERER WAS NOT SELECTED  
17 FOR AWARD; (B) THE QUALITATIVE AND QUANTITATIVE ANALYSIS EMPLOYED BY THE  
18 AGENCY IN ASSESSING THE RELATIVE MERITS OF EACH BID; (C) THE APPLICATION  
19 OF EACH OF THE SELECTION CRITERIA TO EACH BID; AND (D) WHY THE WINNING  
20 BID WAS SELECTED.

21 (VII) AFTER THE WRITTEN EXPLANATIONS DESCRIBED IN SUBPARAGRAPH (V) OF  
22 THIS PARAGRAPH HAVE BEEN PROVIDED, THE STATE AGENCY, UPON THE TIMELY  
23 REQUEST OF AN UNSUCCESSFUL OFFERER, SHALL PROVIDE A REASONABLE OPPORTU-  
24 NITY FOR A DISCUSSION WITH AGENCY PERSONNEL WHO WERE INVOLVED IN AND ARE  
25 KNOWLEDGEABLE ABOUT THE BID EVALUATION PROCESS CONCERNING THE WRITTEN  
26 EXPLANATIONS. SUCH PERSONNEL SHALL ALSO PROVIDE, TO THE EXTENT PRACTICA-  
27 BLE, ADVICE AND GUIDANCE TO THE UNSUCCESSFUL OFFERER CONCERNING METHODS  
28 OF IMPROVING BIDS BY SUCH OFFERER.

29 S 2. None of the provisions of this act shall serve as prima facie  
30 evidence in any action against the state of New York or any entity  
31 acting for or on behalf of the state of New York.

32 S 3. This act shall take effect immediately; provided that the amend-  
33 ments to section 163 of the state finance law made by section one of  
34 this act shall not affect the repeal of such section and shall be deemed  
35 repealed therewith.