

STATE OF NEW YORK

566

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. CAHILL, ABINANTI -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, the economic development law, the general municipal law and the public authorities law, in relation to considering net economic impact in procurement contracts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "competitive procurement act".

3 § 2. Legislative findings. The legislature hereby finds that in order
4 to assure the economically sound use of public funds for the benefit of
5 the entire state and to facilitate the acquisition of facilities and
6 commodities of maximum quality, this act shall require the negotiation
7 of such procurement contracts for public works and public purchases to
8 make the net economic impact of such contract a priority in awarding
9 such procurement contracts. Although the economic impact traditionally
10 includes evaluation of the direct, indirect, and induced impacts of a
11 contract on the economy of this state, the legislature further finds
12 that the "net economic impact" must include consideration of the lowest
13 responsible bid and best value as additional component criteria in
14 determining the overall economic impact of a contract on the state's
15 economy. Therefore, it is in the public's best interest to incorporate
16 the lowest responsible bid and best value criteria into the net economic
17 impact criterion in order to award the most economically viable procure-
18 ment contracts in New York state.

19 § 3. The state finance law is amended by adding a new section 139-m to
20 read as follows:

21 § 139-m. Net economic impact in procurement contracts. 1. Notwith-
22 standing any other provision of law to the contrary, where a contract is
23 to be awarded by a state agency, public authority or municipality pursu-

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

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1 ant to a competitive bidding process or a request for proposal process,
2 such state agency, public authority or municipality shall require that
3 any proposal submitted by a prospective contractor in response thereto
4 include an economic impact statement detailing how an award of the
5 contract to the particular contractor would benefit the economy of New
6 York state and shall provide that net economic impact will be considered
7 in making the award. The weight to be given to such net economic impact
8 criterion relative to other criteria used to evaluate the proposals,
9 including lowest responsible bidder and best value, shall be determined
10 by the contracting agency, authority or municipality on a case by case
11 basis. The state agency, public authority, or municipality shall give
12 priority to the net economic impact criterion wherever practicable and
13 set forth the basis for its award in writing.

14 2. For the purposes of this section, the following terms shall have
15 the following definitions:

16 (a) "Net economic impact" means the measure of economic stimulation
17 that occurs from purchasing transactions that have occurred within the
18 local economy of New York state and the lowest responsible bid. Net
19 economic impact shall be measured by direct impact, indirect impact and
20 induced impact, as well as lowest responsible bid and best value, which
21 are defined as:

22 (1) "Direct impact" means the amount of direct economic activity
23 generated by the purchasing transaction, or business transactions, in
24 question. The sets of numbers used to determine direct impact are a
25 result of developing per capita numbers based on actual economic data
26 supplied by transaction management, attendance figures, and other finan-
27 cial information for all transaction-related activities, as well as
28 using available transaction industry average per capita expenditure
29 levels for various items.

30 (2) "Indirect impact" includes economic activity felt by businesses as
31 an indirect result of the purchasing or business transaction.

32 (3) "Induced impact" is the impact generated when those surrounding
33 businesses purchase additional products and services, and hire more
34 employees to meet the demand brought on by direct and indirect impacts.

35 (4) "Lowest responsible bidder" means any person, firm, corporation,
36 successor corporation, contractor or subcontractor who (i) submits the
37 lowest responsible bid and (ii) is not disqualified on any of the
38 grounds provided by law, rule or regulation.

39 (5) "Best value" means the same as in subdivision one of section one
40 hundred sixty-three of this chapter.

41 (b) "Municipality" shall mean any city, town, village, county, municip-
42 al corporation, district corporation, district or any office, depart-
43 ment or agency, thereof.

44 (c) "State agency" shall, notwithstanding any other provision of law,
45 mean any state department, board, bureau, division, office, council,
46 committee or officer of the state, or the state university of New York,
47 or the senior colleges of the city university of New York, or any public
48 benefit corporation or commission at least one of whose members are
49 appointed by the governor.

50 3. The comptroller and the commissioner of the department of economic
51 development shall establish, through the promulgation of rules and regu-
52 lations, and in consultation with the heads of state agencies, a method
53 for structuring requests for proposals to require inclusion of an
54 economic impact statement and in evaluating responses to such requests
55 for proposals. The comptroller shall also establish through the promul-
56 gation of rules and regulations guidelines for agencies, authorities and

1 municipalities to incorporate consideration of the lowest responsible
2 bidder criteria into the net economic impact formula. Such net economic
3 impact shall include, but not be limited to, consideration of where
4 subcontractors used by contractors to fulfill a contract are located,
5 how many jobs in the state, if any, will be created by the awarding of
6 such a contract, and the estimated tax revenue and ancillary economic
7 activity that would be generated in the state through the awarding of
8 such contracts and subsequent subcontracts, lowest responsible bid, and
9 best value. Such rules and regulations shall include a procedure whereby
10 a state agency, public authority or municipality may request a waiver
11 from the requirements of this section.

12 4. (a) The provisions of this section shall not apply to contracts for
13 which a state agency, public authority, or municipality receives funds
14 administered by the federal government, except to the extent that the
15 federal government would not withhold such funds owing to the state
16 agency's, public authority's, or municipality's compliance with this
17 section.

18 (b) The provisions of this section shall not apply to contracts
19 between a state agency, public authority, or municipality in negotiated
20 reciprocity for goods or services, except to the extent that such net
21 economic impact shall not undermine such reciprocal contract agreement.

22 5. Any person, firm, corporation, successor corporation, labor organ-
23 ization, contractor or subcontractor may, within ten days after a bid is
24 accepted, file an application to challenge the determination. Upon
25 receipt of such application, the comptroller, or his or her designee,
26 shall conduct a hearing to determine the validity of the application.
27 Notice shall be given to the applicant and to the proposed contract bid
28 awardee of the date, time and place of the hearing. The applicant and
29 the proposed contract bid awardee shall be given the opportunity to
30 present evidence and witnesses on their behalf. The comptroller, or his
31 or her designee, presiding over such hearing shall issue a written deci-
32 sion with findings of fact whether the proposed contract bid awardee is
33 valid. Such contract shall not be awarded prior to such decision. The
34 awarding agency, authority, or municipality shall notify all bidders
35 regarding the selection of its proposed contract bid awardee.

36 § 4. The opening paragraph and paragraph c of subdivision 2, the open-
37 ing paragraph and subparagraphs (ii), (v) and (vi) of paragraph a and
38 subparagraph (i) of paragraph b of subdivision 3 of section 163 of the
39 state finance law, as added by chapter 83 of the laws of 1995, are
40 amended to read as follows:

41 The objective of state procurement is to facilitate each state agen-
42 cy's mission while protecting the interests of the state and its taxpay-
43 ers and promoting fairness in contracting with the business community.
44 The state's procurement process shall be guided by the net economic
45 impact, pursuant to section one hundred thirty-nine-m of this chapter,
46 of a contract on the state and the following principles:

47 c. To encourage the investment of the private and not-for-profit
48 sectors in New York state by making reasonable efforts to ensure that
49 offerers are apprised of procurement opportunities; by specifying the
50 elements of a responsive bid and disclosing the process for awarding
51 contracts including, if applicable, the relative importance and/or
52 weight of [~~cost~~] net economic impact and the overall technical criterion
53 for evaluating offers; and by ensuring the procurement is conducted
54 accordingly.

1 State agency procurement practices for commodities shall incorporate
2 net economic impact, pursuant to section one hundred thirty-nine-m of
3 this chapter, and then the following:

4 (ii) Commodities contracts shall be awarded on the basis of [~~lowest~~
5 ~~price-to~~] net economic impact of a responsive and responsible offerer;
6 or, in the case of multiple awards, in accordance with paragraph c of
7 subdivision ten of this section.

8 (v) Consistent with guidelines issued by the state procurement coun-
9 cil, state agencies may competitively purchase commodities procured in
10 accordance with this article in lieu of using centralized contracts when
11 the resultant [~~price-is-less~~] net economic impact is greater than the
12 centralized contract [~~price~~].

13 (vi) When justified by [~~price~~] net economic impact, state agencies,
14 and hospitals and facilities managed and controlled by state agencies
15 eligible pursuant to section twenty-eight hundred three-a of the public
16 health law, shall be eligible to make purchases pursuant to guidelines
17 issued by the state procurement council from a consortium or comparable
18 entity in lieu of using centralized contracts for commodities.

19 (i) determine, in cooperation with the state procurement council and
20 state agencies, the identity, form, function and utility of those
21 commodities which shall be made available on or through centralized
22 contracts. Criteria shall include the net economic impact, as defined in
23 section one hundred thirty-nine-m of this chapter, on New York state's
24 economy. Criteria may include, but need not be limited to, the avail-
25 ability of a volume discount, prior use of the commodity among state
26 agencies and the relative cost of establishing the contract, its antic-
27 ipated use and expected actual savings for the state. The commissioner
28 may also act as a broker for state agencies to procure commodities.

29 § 5. The opening paragraph and paragraph d of subdivision 4 of section
30 163 of the state finance law, as added by chapter 83 of the laws of
31 1995, are amended to read as follows:

32 State agency procurement practices for services shall incorporate the
33 net economic impact, as defined in section one hundred thirty-nine-m of
34 this chapter, and then the following:

35 d. Service contracts shall be awarded on the basis of [~~best-value-to~~]
36 net economic impact of a responsive and responsible offerer; or, in the
37 case of multiple awards, in accordance with paragraph c of subdivision
38 ten of this section.

39 § 6. Subdivision 7, paragraphs a and b of subdivision 9, the opening
40 paragraph and paragraph a of subdivision 10, and the opening paragraph
41 of subdivision 11 of section 163 of the state finance law, subdivision 7
42 as amended by section 2 of subpart A of part KK of chapter 57 of the
43 laws of 2018, paragraphs a and b of subdivision 9, the opening paragraph
44 and paragraph a of subdivision 10, and the opening paragraph of subdivi-
45 sion 11 as added by chapter 83 of the laws of 1995, and are amended to
46 read as follows:

47 7. Method of procurement. Consistent with the requirements of subdivi-
48 sions three and four of this section, state agencies shall select among
49 permissible methods of procurement including, but not limited to, an
50 invitation for bid, request for proposals or other means of solicitation
51 pursuant to guidelines issued by the state procurement council. State
52 agencies may accept bids electronically including submission of the
53 statement of non-collusion required by section one hundred thirty-nine-d
54 of this chapter, and the statement of certification required by section
55 one hundred thirty-nine-l of this chapter, and, starting April first,
56 two thousand twelve, and ending March thirty-first, two thousand

1 fifteen, may, for commodity, service and technology contracts require
2 electronic submission as the sole method for the submission of bids for
3 the solicitation. State agencies shall undertake no more than eighty-
4 five such electronic bid solicitations, none of which shall be reverse
5 auctions, prior to April first, two thousand fifteen. In addition, state
6 agencies may conduct up to twenty reverse auctions through electronic
7 means, prior to April first, two thousand fifteen. Prior to requiring
8 the electronic submission of bids, the agency shall make a determi-
9 nation, which shall be documented in the procurement record, that elec-
10 tronic submission affords a fair and equal opportunity for offerers to
11 submit responsive offers. Within thirty days of the completion of the
12 eighty-fifth electronic bid solicitation, or by April first, two thou-
13 sand fifteen, whichever is earlier, the commissioner shall prepare a
14 report assessing the use of electronic submissions and make recommenda-
15 tions regarding future use of this procurement method. In addition,
16 within thirty days of the completion of the twentieth reverse auction
17 through electronic means, or by April first, two thousand fifteen,
18 whichever is earlier, the commissioner shall prepare a report assessing
19 the use of reverse auctions through electronic means and make recommen-
20 dations regarding future use of this procurement method. Such reports
21 shall be published on the website of the office of general services.
22 Except where otherwise provided by law, procurements shall be compet-
23 itive, and state agencies shall conduct formal competitive procurements
24 to the maximum extent practicable. State agencies shall document the
25 determination of the method of procurement and the basis of award in the
26 procurement record. Where the basis for award is the best [~~value~~] net
27 economic impact offer, the state agency shall document, in the procure-
28 ment record and in advance of the initial receipt of offers, the deter-
29 mination of the evaluation criteria, which whenever possible, shall be
30 quantifiable, and the process to be used in the determination of best
31 [~~value~~] net economic impact and the manner in which the evaluation proc-
32 ess and selection shall be conducted.

33 a. The commissioner or a state agency shall select a formal compet-
34 itive procurement process in accordance with guidelines established by
35 the state procurement council and document its determination in the
36 procurement record. The process shall include, but is not limited to, a
37 clear statement of need; a description of the required specifications
38 governing performance and related factors; a reasonable process for
39 ensuring a competitive field; a fair and equal opportunity for offerers
40 to submit responsive offers; and a balanced and fair method of award.
41 Where the basis for the award is best [~~value~~] net economic impact,
42 documentation in the procurement record shall, where practicable,
43 include a quantification of the application of the criteria to the
44 rating of proposals and the evaluation results, or, where not practica-
45 ble, such other justification which demonstrates that best [~~value~~] net
46 economic impact will be achieved.

47 b. The solicitation shall prescribe the minimum specifications or
48 requirements that must be met in order to be considered responsive and
49 shall describe and disclose the general manner in which the evaluation
50 and selection shall be conducted. Where appropriate, the solicitation
51 shall identify the relative importance and/or weight of [~~cost~~] net
52 economic impact and the overall technical criterion to be considered by
53 a state agency in its determination of best [~~value~~] net economic impact.

54 Contracts for commodities shall be awarded on the basis of [~~lowest~~
55 price-to] net economic impact of a responsive and responsible offerer,
56 pursuant to section one hundred thirty-nine-m of this chapter.

1 Contracts for services shall be awarded on the basis of best [~~value~~] net
2 economic impact from a responsive and responsible offerer, pursuant to
3 section one hundred thirty-nine-m of this chapter. Multiple awards for
4 services and commodities shall be conducted in accordance with paragraph
5 c of this subdivision.

6 a. Selection and award shall be a written determination in the
7 procurement record made by the commissioner or a state agency in a
8 manner consistent with the provisions of the solicitation. In the event
9 two offers are found to be substantially equivalent, [~~price~~] net econom-
10 ic impact shall be the basis for determining the award recipient or,
11 when [~~price~~] net economic impact and other factors are found to be
12 substantially equivalent, the determination of the commissioner or agen-
13 cy head to award a contract to one or more of such bidders shall be
14 final. The basis for determining the award shall be documented in the
15 procurement record.

16 It shall be the responsibility of the head of each state agency to
17 periodically sample the results of the procurement process to test for
18 reasonableness; to ensure that the results withstand public scrutiny and
19 that the quality and the price of the purchase makes sense; and to
20 ensure that purchasing is conducted in a manner consistent with the best
21 net economic impact interests of the state.

22 § 7. Subdivision 1 of section 142 of the economic development law, as
23 amended by chapter 137 of the laws of 2008, is amended to read as
24 follows:

25 1. The commissioner shall publish on a daily basis a procurement
26 opportunities newsletter, which shall contain notices of procurement
27 contract opportunities and any other information the commissioner deems
28 necessary to effectuate the purposes of this article including, but not
29 limited to, any changes in the law, rules and regulations regarding
30 procurement contracts. Notices of procurement contract opportunities
31 shall be available on the internet for at least fifteen days.

32 § 8. Section 100-a of the general municipal law, as added by chapter
33 363 of the laws of 1964, is amended to read as follows:

34 § 100-a. Declaration of policy. [~~It~~] Notwithstanding any provision of
35 this article to the contrary, it is hereby declared to be the policy of
36 this state that this article shall [~~be construed~~] consider the net
37 economic impact, as defined in section one hundred thirty-nine-m of the
38 state finance law, as the priority in the negotiation of contracts for
39 public works and public purchases to which political subdivisions [~~or~~
40 ~~and district~~] and/or districts therein [~~is~~] are a party so as to assure
41 the prudent and economical use of public moneys for the benefit of all
42 the inhabitants of the state and to facilitate the acquisition of facil-
43 ities and commodities of maximum quality [~~at the lowest possible cost~~].

44 § 9. Subdivision 1 of section 2879 of the public authorities law, as
45 amended by chapter 564 of the laws of 1988, is amended to read as
46 follows:

47 1. Every public authority and public benefit corporation, a majority
48 of the members of which consist of persons either appointed by the
49 governor or who serve as members by virtue of holding a civil office of
50 the state, or a combination thereof, (such entities to be hereinafter in
51 this section referred to as "corporation") shall adopt by resolution
52 comprehensive guidelines which detail the corporation's operative policy
53 and instructions regarding the use, awarding, monitoring and reporting
54 of procurement contracts. Notwithstanding any other provision of law,
55 rule or regulation, such guidelines shall include, but not be limited
56 to, making consideration of the net economic impact, as defined in

1 section one hundred thirty-nine-m of the state finance law, the priority
2 in awarding procurement contracts. Guidelines approved by the corpo-
3 ration shall be annually reviewed and approved by the corporation.
4 § 10. This act shall take effect on the one hundred eightieth day
5 after it shall have become a law; provided, however, the provisions of
6 this act shall be applied to all contracts entered into on or after
7 April 1, 2019; and provided, further, however, that the amendments to
8 the provisions of section 163 of the state finance law made by sections
9 four, five and six of this act shall not affect the repeal of such
10 section and shall be deemed repealed therewith. Effective immediately,
11 the addition, amendment and/or repeal of any rule or regulation neces-
12 sary for the implementation of this act on its effective date are
13 authorized and directed to be made and completed on or before such date.