STATE OF NEW YORK

5786

2021-2022 Regular Sessions

IN ASSEMBLY

February 25, 2021

Introduced by M. of A. HAWLEY -- read once and referred to the Committee on Local Governments

AN ACT to amend the local finance law, in relation to the establishment of an electronic open auction public bond sale pilot program solely for certain municipalities; and providing for the repeal of such provisions upon the expiration thereof

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

Section 1. The local finance law is amended by adding a new section 58.11 to read as follows:

§ 58.11 Electronic open auction public bond sale pilot program. a. As used in this section:

1. "Municipality" means a county with a population greater than fifty-seven thousand, and less than sixty-one thousand, that has issued at least three million five hundred thousand dollars in bonds within at least one of the preceding three years.

2. "Nationally recognized electronic securities bidding service" means a bidding service that is approved by the superintendent pursuant to subdivision b of this section.

3. "Open auction" means a bond sale procedure that allows a bidder to receive information with respect to the ranking of its bids prior to the conclusion of the bidding period in accordance with the municipality's notice of such bond sale circulated in accordance with applicable requirements of this chapter.

4. "Program" means the electronic open auction public bond sale pilot program established pursuant to this section.

5. "Superintendent" means the superintendent of financial services.

b. 1. There is hereby established an electronic open auction bond sale pilot program authorizing municipalities to conduct open auction public bond sales through any nationally recognized electronic securities bidding service approved by the superintendent. Nationally recognized

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

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electronic securities bidding services desiring to operate an electronic open auction shall apply to the superintendent for authorization to do so by filing an application with the superintendent. The superintendent shall make available an application form that provides the superintendent with information regarding the technology and security practices maintained by the nationally recognized electronic securities bidding service, the requirements to be established for bidding by bidders, the methods by which auction sales are conducted, the experience of the nationally recognized electronic securities bidding service in conducting electronic open auctions of bonds, and other information the superintendent may deem relevant.

2. If the superintendent determines that the requirements and conditions of the open auction are in accordance with the provisions of this chapter and the bidding service provides a secure, open and competitive opportunity for qualified bidders to submit proposals, the application shall be deemed approved.

3. The superintendent shall post information regarding the nationally recognized electronic securities bidding services that have been approved for use by municipalities on the department of financial services website.

c. If the chief fiscal officer of the municipality has authorized the receipt of bids in an electronic open auction format, such electronic bids may be submitted in the form of open auctions conducted through a nationally recognized electronic securities bidding service which entity shall be deemed to be the designated receiving device pursuant to section 58.00 of this title. Notice of any bond sale shall provide for the manner in which the bidding period may be extended and the basis for determination of the winning bidder.

d. Notwithstanding the provisions of subdivision one of section three hundred five of the state technology law, if the notice of sale for the open auction public bond contains a provision that bids will only be accepted electronically in the manner provided in such notice of sale, the municipality shall not be required to accept non-electronic bids in any form.

e. The municipality's chief fiscal officer shall administer the program and shall publish its policies and procedures for the procurement of nationally recognized electronic securities bidding services on the municipality's internet website. Such policies and procedures shall include policies to prevent fraud. Except as modified by this section, the municipal program shall comply with this chapter and all other applicable laws, rules and regulations related to the sale of bonds.

f. The municipality's chief fiscal officer shall review the electronic open auction bidding process to ensure that the bond sale was completed in a timely fashion; the sale was completed without errors; and the process was favorable as compared to the method currently used by the municipality.

g. The municipality shall conduct evaluations of the program annually with a summary evaluation at the end of the two year program. The municipality shall submit the evaluations to the superintendent, the temporary president of the senate and the speaker of the assembly. Such report shall include, but not be limited to, any demonstrated evidence that sale of public bonds using electronic open auctions is comparable to the cost of issuing public bonds through the current sealed bid process, the fees associated with nationally recognized electronic securities bidding services, whether the use of electronic open auctions

resulted in an increased number of bidders and whether the process was favorable as compared to the method currently used by the municipality.

§ 2. This act shall take effect immediately and shall expire January 1, 2024 when upon such date the provisions of this act shall be deemed repealed.