

# STATE OF NEW YORK

1216

2021-2022 Regular Sessions

## IN SENATE

January 8, 2021

Introduced by Sens. BENJAMIN, BIAGGI, KAMINSKY, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts

AN ACT to amend the state finance law, in relation to requiring state contractors submit a statement on human trafficking

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

1 Section 1. The state finance law is amended by adding a new section  
2 139-d-1 to read as follows:

3 § 139-d-1. Statement on human trafficking in bids to the state. 1.  
4 (a) Every bid hereafter made to the state or any public department,  
5 agency or official thereof, where competitive bidding is required by  
6 statute, rule or regulation, for work or services performed or to be  
7 performed or goods sold or to be sold, shall contain the following  
8 statement subscribed by the bidder and affirmed by such bidder as true  
9 under the penalties of perjury:

10 "By submission of this bid, each bidder and each person signing on  
11 behalf of any bidder certifies, and in the case of a joint bid each  
12 party thereto certifies as to its own organization, under penalty of  
13 perjury, that to the best of his or her knowledge and belief, the goods,  
14 work or services to be supplied or performed will be supplied or  
15 performed without doing business with any organization, person, or enti-  
16 ty that is engaging in human trafficking."

17 (b) In addition to the statement required by paragraph (a) of this  
18 subdivision, any bidder that maintains a written policy for preventing  
19 human trafficking within its operations, business dealings, and supply  
20 chain shall submit to the state or any public department, agency or  
21 official thereof soliciting such bid such current written policy when  
22 submitting such statement.

23 2. Notwithstanding the foregoing, the statement on human trafficking  
24 or written policy for preventing human trafficking required pursuant to

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

LBD04935-01-1

1 subdivision one of this section may be submitted electronically in  
2 accordance with the provisions of subdivision seven of section one  
3 hundred sixty-three of this chapter.

4 3. A bid shall not be considered for award nor shall any award be made  
5 where subdivision one of this section has not been complied with;  
6 provided however, that if in any case the bidder cannot make the forego-  
7 ing certification, the bidder shall so state and shall furnish with the  
8 bid a signed statement which sets forth in detail the reasons therefor.

9 4. Any bid hereafter made to the state or any public department, agen-  
10 cy or official thereof by a corporate bidder for work or services  
11 performed or to be performed or goods sold or to be sold, where compet-  
12 itive bidding is required by statute, rule or regulation, and where such  
13 bid contains the certification or written policy referred to in subdivi-  
14 sion one of this section, shall be deemed to have been authorized by the  
15 board of directors of the bidder, and such authorization shall be deemed  
16 to include the signing and submission of the bid and the inclusion ther-  
17 ein of the certificate on human trafficking and written policy for  
18 preventing human trafficking as the act and deed of the corporation.

19 5. For the purposes of this section, the term "engaging in human traf-  
20 ficking" shall not be construed to include an individual who is or was a  
21 victim of human trafficking.

22 § 2. Subdivision 7 of section 163 of the state finance law, as amended  
23 by section 2 of subpart A of part KK of chapter 57 of the laws of 2018,  
24 is amended to read as follows:

25 7. Method of procurement. Consistent with the requirements of subdivi-  
26 sions three and four of this section, state agencies shall select among  
27 permissible methods of procurement including, but not limited to, an  
28 invitation for bid, request for proposals or other means of solicitation  
29 pursuant to guidelines issued by the state procurement council. State  
30 agencies may accept bids electronically including submission of the  
31 statement of non-collusion required by section one hundred thirty-nine-d  
32 of this chapter, and the statement of certification required by section  
33 one hundred thirty-nine-1 of this chapter, the statement on human traf-  
34 ficking and written policy for preventing human trafficking required by  
35 section one hundred thirty-nine-d-1 of this chapter, and, starting April  
36 first, two thousand twelve, and ending March thirty-first, two thousand  
37 fifteen, may, for commodity, service and technology contracts require  
38 electronic submission as the sole method for the submission of bids for  
39 the solicitation. State agencies shall undertake no more than eighty-  
40 five such electronic bid solicitations, none of which shall be reverse  
41 auctions, prior to April first, two thousand fifteen. In addition, state  
42 agencies may conduct up to twenty reverse auctions through electronic  
43 means, prior to April first, two thousand fifteen. Prior to requiring  
44 the electronic submission of bids, the agency shall make a determi-  
45 nation, which shall be documented in the procurement record, that elec-  
46 tronic submission affords a fair and equal opportunity for offerers to  
47 submit responsive offers. Within thirty days of the completion of the  
48 eighty-fifth electronic bid solicitation, or by April first, two thou-  
49 sand fifteen, whichever is earlier, the commissioner shall prepare a  
50 report assessing the use of electronic submissions and make recommenda-  
51 tions regarding future use of this procurement method. In addition,  
52 within thirty days of the completion of the twentieth reverse auction  
53 through electronic means, or by April first, two thousand fifteen,  
54 whichever is earlier, the commissioner shall prepare a report assessing  
55 the use of reverse auctions through electronic means and make recommen-  
56 dations regarding future use of this procurement method. Such reports

1 shall be published on the website of the office of general services.  
2 Except where otherwise provided by law, procurements shall be compet-  
3 itive, and state agencies shall conduct formal competitive procurements  
4 to the maximum extent practicable. State agencies shall document the  
5 determination of the method of procurement and the basis of award in the  
6 procurement record. Where the basis for award is the best value offer,  
7 the state agency shall document, in the procurement record and in  
8 advance of the initial receipt of offers, the determination of the eval-  
9 uation criteria, which whenever possible, shall be quantifiable, and the  
10 process to be used in the determination of best value and the manner in  
11 which the evaluation process and selection shall be conducted.

12 § 3. This act shall take effect on the ninetieth day after it shall  
13 have become a law and shall only apply to contracts entered into on or  
14 after such effective date; provided however, that the amendments to  
15 subdivision 7 of section 163 of the state finance law made by section  
16 two of this act shall not affect the repeal of such section and shall be  
17 deemed repealed therewith.