STATE OF NEW YORK

7405

2023-2024 Regular Sessions

IN ASSEMBLY

May 19, 2023

Introduced by M. of A. McDONALD -- (at request of the State Comptroller) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law and the public authorities law, in relation to protest procedures

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

Section 1. Subdivision 1 of section 163 of the state finance law is amended by adding six new paragraphs l, m, n, o, p and q to read as follows:

l. "Bidder" means an individual, entity or other offeror submitting a response to a solicitation by a state agency, as defined in this chapter.

m. "Contract award" means a written determination from a state agency to a bidder indicating that the state agency has selected a particular bidder under the procurement process.

n. "Interested party" means a participant in the procurement process, and those who can establish that their participation in the procurement process was foreclosed by the actions of the state agency and have suffered harm as a result of the manner in which the procurement was conducted.

o. "Protest" means a written challenge by an interested party of a contract award by a state agency.

p. "Solicitation" means a document issued by a state agency, requesting a response to a procurement need, including an invitation for bids, a request for proposals, or another written method of seeking a bid or a proposal for a specified purpose.

q. "Protest procedure" means the guidance developed and implemented by every state agency pursuant to the provisions of this section to govern the protest of a contract award.

§ 2. Section 163 of the state finance law is amended by adding a new subdivision 16 to read as follows:

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

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16. State agency protest. Every state agency shall make available protest procedures to interested parties and provide notice of their protest procedures in solicitation documents, and all bidders shall be given written notice of the contract award. At a minimum, protest procedures shall include:

a. the form and manner for submission of a bid protest;

b. the deadline for submission of a bid protest, which shall be either ten business days from notice of the contract award or five business days from the debriefing, whichever is later;

c. the manner in which the bid protest shall be resolved, and a determination shall be issued; and

d. a retention policy for all records related to bid protests.

§ 3. Section 2879 of the public authorities law is amended by adding a new subdivision 10 to read as follows:

10. (a) In addition to the procurement contract guidelines required by this section, every corporation shall make available protest procedures to interested parties and provide notice of their protest procedures in solicitation documents, and all bidders shall be given written notice of the contract award. At a minimum, protest procedures shall include:

(i) the form and manner for submission of a bid protest;

(ii) the deadline for submission of a bid protest, which shall be either ten business days from notice of the contract award or five business days from the debriefing, whichever is later;

(iii) the manner in which the bid protest shall be resolved, and a determination shall be issued; and

(iv) a retention policy for all records related to bid protests.

(b) For the purposes of this subdivision, the following terms shall have the following meanings:

(i) "Bidder" means an individual, entity or other offeror submitting a response to a solicitation by a corporation.

(ii) "Contract award" means a written determination from a corporation to a bidder indicating that the corporation has selected a particular bidder under the procurement process.

(iii) "Interested party" means a participant in the procurement process, and those who can establish that their participation in the procurement process was foreclosed by the actions of the corporation and have suffered harm as a result of the manner in which the procurement was conducted.

(iv) "Protest" means a written challenge by an interested party of a contract award by a corporation.

(v) "Solicitation" means a document issued by a corporation, requesting a response to a procurement need, including an invitation for bids, a request for proposals, or another written method of seeking a bid or a proposal for a specified purpose.

(vi) "Protest procedure" means the guidance developed and implemented by every corporation pursuant to the provisions of this section to govern the protest of a contract award.

§ 4. This act shall take effect on the sixtieth day after it shall have become a law; provided, however, that the amendments to section 163 of the state finance law made by sections one and two of this act shall not affect the repeal of such section and shall be deemed repealed therewith.