STATE OF NEW YORK

4235

2023-2024 Regular Sessions

IN SENATE

February 6, 2023

Introduced by Sen. CLEARE -- 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:

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

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

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

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

2. Notwithstanding the foregoing, the statement on human trafficking or written policy for preventing human trafficking required pursuant to subdivision one of this section may be submitted electronically in

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

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accordance with the provisions of subdivision seven of section one hundred sixty-three of this chapter.

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

4. Any bid hereafter made to the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule or regulation, and where such bid contains the certification or written policy referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate on human trafficking and written policy for preventing human trafficking as the act and deed of the corporation.

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

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

7. Method of procurement. Consistent with the requirements of subdivisions three and four of this section, state agencies shall select among permissible methods of procurement including, but not limited to, an invitation for bid, request for proposals or other means of solicitation pursuant to guidelines issued by the state procurement council. State agencies may accept bids electronically including submission of the statement of non-collusion required by section one hundred thirty-nine-d of this chapter, and the statement of certification required by section one hundred thirty-nine-l of this chapter, the statement on human trafficking and written policy for preventing human trafficking required by section one hundred thirty-nine-d-1 of this chapter, and, starting April first, two thousand twelve, and ending March thirty-first, two thousand fifteen, may, for commodity, service and technology contracts require electronic submission as the sole method for the submission of bids for the solicitation. State agencies shall undertake no more than eighty-five such electronic bid solicitations, none of which shall be reverse auctions, prior to April first, two thousand fifteen. In addition, state agencies may conduct up to twenty reverse auctions through electronic means, prior to April first, two thousand fifteen. Prior to requiring the electronic submission of bids, the agency shall make a determination, which shall be documented in the procurement record, that electronic submission affords a fair and equal opportunity for offerers to submit responsive offers. Within thirty days of the completion of the eighty-fifth electronic bid solicitation, or by April first, two thousand fifteen, whichever is earlier, the commissioner shall prepare a report assessing the use of electronic submissions and make recommendations regarding future use of this procurement method. In addition, within thirty days of the completion of the twentieth reverse auction through electronic means, or by April first, two thousand fifteen, whichever is earlier, the commissioner shall prepare a report assessing the use of reverse auctions through electronic means and make recommendations regarding future use of this procurement method. Such reports shall be published on the website of the office of general services.

Except where otherwise provided by law, procurements shall be competitive, and state agencies shall conduct formal competitive procurements to the maximum extent practicable. State agencies shall document the determination of the method of procurement and the basis of award in the procurement record. Where the basis for award is the best value offer, the state agency shall document, in the procurement record and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted.

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