

STATE OF NEW YORK

6942

2023-2024 Regular Sessions

IN SENATE

May 16, 2023

Introduced by Sen. COONEY -- (at request of the State Comptroller) --
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 and the public authorities law, in
relation to protest procedures

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

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

4 l. "Bidder" means an individual, entity or other offeror submitting a
5 response to a solicitation by a state agency, as defined in this chap-
6 ter.

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

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

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

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

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

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

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

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

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

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

12 c. the manner in which the bid protest shall be resolved, and a deter-
13 mination shall be issued; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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