

STATE OF NEW YORK

8498--A

IN SENATE

February 6, 2024

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to the debriefing of certain contracts

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

1 Section 1. Paragraph c of subdivision 9 of section 163 of the state
2 finance law, as amended by section 2-b of part F of chapter 57 of the
3 laws of 2016, is amended to read as follows:

4 c. Where provided in the solicitation, state agencies may require
5 clarification from offerers for purposes of assuring a full understand-
6 ing of responsiveness to the solicitation requirements. Where provided
7 for in the solicitation, revisions may be permitted from all offerers
8 determined to be susceptible of being selected for contract award, prior
9 to award. Offerers shall be accorded fair and equal treatment with
10 respect to their opportunity for discussion and revision of offers. A
11 state agency shall, upon request, provide a debriefing to any unsuccess-
12 ful offerer that responded to a request for proposal or an invitation
13 for bids, regarding the reasons that the proposal or bid submitted by
14 the unsuccessful offerer was not selected for an award. The opportunity
15 for an unsuccessful offerer to seek a debriefing, and the availability
16 of a written explanation, shall be stated in the solicitation.

17 (i) A debriefing shall be requested by the unsuccessful offerer within
18 [~~fifteen~~] thirty calendar days of release by the state agency of a
19 notice in writing or electronically that the offerer's offer is unsuccess-
20 ful.

21 (ii) Such notice shall be provided to all unsuccessful offerers by the
22 state agency for the specific procurement.

23 (iii) The state agency, upon a request made within [~~fifteen~~] thirty
24 days of release of the written or electronic notice from the unsuccess-
25 ful offerer for a debriefing, shall schedule the debriefing to occur

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

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1 within a reasonable time of such request. Debriefings shall be conducted
2 by the state agency with the unsuccessful offerer in-person, provided,
3 however, the parties may mutually agree to utilize other means such as,
4 but not limited to, by telephone, video-conferencing or other types of
5 electronic communications. State agency personnel participating in the
6 debriefing discussion shall have been involved with and knowledgeable
7 about the procurement and the evaluation and selection of the successful
8 offerer or offerers.

9 (iv) Such debriefing shall include, but need not be limited to: (A)
10 the reasons that the proposal, bid or offer submitted by the unsucces-
11 sful offerer was not selected for award; (B) the qualitative and quanti-
12 tative analysis employed by the agency in assessing the relative merits
13 of the proposals, bids or offers; (C) the application of the selection
14 criteria to the unsuccessful offerer's proposal; and (D) when the
15 debriefing is held after the final award, the reasons for the selection
16 of the winning proposal, bid or offer. The debriefing shall also
17 provide, to the extent practicable, general advice and guidance to the
18 unsuccessful offerer concerning potential ways that their future
19 proposals, bids or offers could be more responsive. Provided, however,
20 that an unsuccessful offerer may additionally request a written explana-
21 tion comparable to such debriefing to be provided by mail or electronic
22 mail, which the state agency shall provide within sixty days of the
23 offerer's request for a written explanation.

24 § 2. This act shall take effect on the ninetieth day after it shall
25 have become a law; provided, however, that the amendments to subdivision
26 9 of section 163 of the state finance law made by section one of this
27 act shall not affect the repeal of such section and shall be deemed
28 repealed therewith.