

Regular Session, 2011

SENATE BILL NO. 83

BY SENATOR DONAHUE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROCUREMENT CODE. Authorizes the use of reverse auctions by certain political subdivisions. (7/1/11)

AN ACT

To amend and reenact R.S. 39:1554(E) and to enact Part IV-A of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 38:2271, and Subpart B-1 of Part III of Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950, comprised of R.S. 39:1598.1, and R.S. 39:1661(D) and 1671(H), relative to purchasing by certain public entities; to authorize the use of reverse auctions by certain public entities for the purchase of certain materials, supplies, services, products, or equipment; to provide for public notice; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part IV-A of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 38:2271, is hereby enacted to read as follows:

PART IV-A. PURCHASE OF MATERIALS, SUPPLIES, OR EQUIPMENT

BY CERTAIN POLITICAL SUBDIVISIONS USING CERTAIN

AUCTION METHODS

§2271. Purchase of materials, supplies, or equipment by certain political subdivisions using certain auction methods

1 A.(1) The bidding provisions of this Chapter shall not apply when a
2 political subdivision purchases materials, supplies, or equipment using a reverse
3 auction as authorized by, and in the manner provided in, this Part. A political
4 subdivision may use reverse auction only with the determination by its
5 procurement officer that the best interests of the political subdivision would be
6 served and that electronic online bidding is more advantageous than other
7 procurement methods provided in this Chapter.

8 (2) For the purposes of this Part:

9 (a) "Political subdivision" means any political subdivision of the state,
10 including but not limited to any political subdivision as defined in Article VI,
11 Section 44 of the Constitution of Louisiana.

12 (b) "Reverse auction" means a competitive online solicitation process on
13 the Internet for equipment, supplies, and other materials in which vendors
14 compete against each other online in real time in an open and interactive
15 environment.

16 B. Prior to the use of reverse auction authorized by this Part, the political
17 subdivision shall develop policies and procedures that may require that:

18 (1) Vendors register before the opening date and time, and as part of the
19 registration, require that the vendors agree to any terms and conditions and
20 other requirements of the solicitation.

21 (2) Vendors be prequalified prior to placing bids and allow only bidders
22 who are prequalified to submit bids.

23 (3) The solicitation shall designate an opening date and time and the
24 closing date and time. The closing date and time may be fixed or remain open
25 depending on the structure of the item being bid.

26 (4) At the opening date and time, the using agency shall begin accepting
27 online bids and continue accepting bids until the bid is officially closed.
28 Registered bidders shall be allowed to lower the price of their bid below the
29 lowest bid posted on the Internet until the closing date and time.

(5) Bidders' identities shall not be revealed during the bidding process; only the successively lower prices, ranks, scores, and related bid details shall be revealed.

(6) All bids shall be posted electronically and updated on a real-time basis.

(7) The using political subdivision shall retain the right to cancel the solicitation if it determines that it is in the political subdivision best interest.

(8) The using political subdivision shall retain its existing authority to determine the criteria that will be used as a basis for making awards.

C. Adequate public notice for the purchases of materials, supplies, or equipment by a political subdivision using a reverse auction shall be given as follows:

(1) The advertisement or notice shall be published two times in a newspaper in the locality, the first advertisement to appear at least fifteen days before the opening date of the reverse auction. In addition to the newspaper advertisement, a political subdivision may also publish an advertisement by electronic media available to the general public.

(2) The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday.

Section 2. R.S. 39:1554(E) is hereby amended and reenacted and Subpart B-1 of Part III of Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950, comprised of R.S. 39:1598.1, and R.S. 39:1661(D) and 1671(H) are hereby enacted to read as follows:

§1554. Application of this Chapter

* * *

E.(1) Political subdivisions authorized to adopt this Chapter. The procurement of supplies, services, major repairs, and construction by political subdivisions of this state shall be in accordance with the provisions of ~~R.S. 38:2181 through 38:2316~~ Chapter 10 of Title 38 of the Louisiana Revised Statutes of

1 1950, except that all political subdivisions are authorized to adopt all or any part of
2 this Chapter and its accompanying regulations.

3 (2) Additionally, all political subdivisions which are not subject to this
4 Chapter may adopt the provisions of R.S. 39:1598.1 and its accompanying
5 regulations.

6 * * *

7 SUBPART B-1. CERTAIN AUCTION METHODS

8 §1598.1. Reverse auction

9 A.(1) Notwithstanding the provisions of Subpart B of this Part, with the
10 approval of the state director of purchasing and the determination of the head
11 of the using agency that the best interests of the state would be served and that
12 electronic online bidding is more advantageous than other procurement
13 methods provided in this Chapter, a reverse auction may be utilized for the
14 acquisition of materials, supplies, services, products, or equipment.

15 (2) For purposes of this Subpart, "reverse auction" means a competitive
16 online solicitation process on the Internet for materials, supplies, services,
17 products, or equipment in which vendors compete against each other online in
18 real time in an open and interactive environment.

19 B. Prior to the implementation of this Subpart, the state director of
20 purchasing shall develop policies, procedures, and promulgate regulations, in
21 accordance with the Administrative Procedure Act. Such policies and
22 procedures may require that:

23 (1) Vendors register before the opening date and time, and as part of the
24 registration, require that the vendors agree to any terms and conditions and
25 other requirements of the solicitation.

26 (2) Vendors be prequalified prior to placing bids and allow only bidders
27 who are prequalified to submit bids.

28 (3) The solicitation shall designate an opening date and time and the
29 closing date and time. The closing date and time may be fixed or remain open

depending on the structure of the item being bid.

(4) At the opening date and time, the using agency shall begin accepting online bids and continue accepting bids until the bid is officially closed. Registered bidders shall be allowed to lower the price of their bid below the lowest bid posted on the Internet until the closing date and time.

(5) Bidders' identities shall not be revealed during the bidding process; only the successively lower prices, ranks, scores, and related bid details shall be revealed.

(6) All bids shall be posted electronically and updated on a real-time basis.

(7) The using agency shall retain the right to cancel the solicitation if it determines that it is in the agency's or the state's best interest.

(8) The using agency shall retain its existing authority to determine the criteria that will be used as a basis for making awards.

C. Adequate public notice for the purchase of materials, supplies, services, or equipment using a reverse auction shall be given as follows:

(1) The advertisement or notice shall be published one time in the official journal of the state at least twenty days before the opening date of the reverse auction.

(2) In the case of any purchase to meet the needs of a single budget unit, the advertisement shall be published also in a newspaper of general circulation printed in the parish in which the budget unit is situated, or, if there is not a newspaper printed in the parish, in a newspaper printed in the nearest parish that has a general circulation in the parish in which the budget unit is situated.

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§1661. Contract clauses; administration

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D. Regulations may permit or require the inclusion in state contracts of clauses relative to reverse auctions pursuant to the implementation of the

provisions of R.S. 39:1598.1.

§1671. Authority to resolve protested solicitations and awards

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H. The state director of purchasing is hereby authorized to promulgate regulations relative to protests, in accordance with the Administrative Procedure Act, to implement the provisions of R.S. 39:1598.1.

Section 3. This Act shall become effective on July 1, 2011; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2011, or on the day following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alan Miller.

DIGEST

Present law provides for the purchase of materials, supplies, services, products, and equipment by public entities. Includes procedure for advertisement for, receipt of, and opening of public bids.

Present law relative to the La. Public Bid Law, provides for procuring of materials, supplies, or equipment by political subdivisions, among other public entities, through the lowest advertised bid.

Proposed law authorizes the use of reverse auction by political subdivisions based on the determination of the procurement officer of such entity that the best interest of that entity would be served by using such electronic procurement method.

Defines "reverse auction" as a competitive online solicitation process on the Internet for materials, supplies, services, products, or equipment in which vendors compete against each other online in real time in an open and interactive environment.

Provides that in a reverse auction, the political subdivision may require, among other things, that:

- (1) Vendors register before the opening date and time.
- (2) Vendors be prequalified prior to placing bids.
- (3) The solicitation designate an opening date and time and the closing date and time.
- (4) At the opening date and time, the using agency begin accepting online bids and continue accepting bids until the bid is officially closed.
- (5) Bidders' identities not be revealed during the bidding process.
- (6) All bids be posted electronically and updated on a real-time basis.
- (7) The using political subdivision retains the right to cancel the solicitation if it

determines that it is in the political subdivision's best interest.

- (8) The using political subdivision retain its existing authority to determine the criteria that will be used as a basis for making awards.

Proposed law requires that adequate public notice for purchases of materials, supplies, or equipment by a political subdivision using a reverse auction be given as follows:

- (1) The advertisement or notice shall be published twice in a newspaper in the locality, the first advertisement to appear at least 15 days before the opening date of the reverse auction. In addition to the newspaper advertisement, a political subdivision may also publish an advertisement by electronic media available to the general public.
- (2) The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday.

Present law relative to the La. Procurement Code, provides for procurement by state agencies of material, supplies, services, products, or equipment.

Proposed law provides that with the approval of the state director of state purchasing and the determination of the head of the using agency that the best interests of the state would be served and that electronic online bidding is more advantageous than other procurement methods provided in the La. Procurement Code, a reverse auction may be utilized for the acquisition of materials, supplies, services, products, or equipment.

Authorizes the state director of purchasing to promulgate regulations, in accordance with the APA, prior to implementation of proposed law.

Proposed law also authorizes the state director of purchasing to promulgate regulations relative to contract clauses and award protests necessary to implementation of reverse auctions.

Proposed law requires that adequate public notice for the purchase of materials, supplies, services, or equipment by state agencies using a reverse auction be given as follows:

- (1) The advertisement or notice shall be published in the official journal of the state at least 20 days before the opening date of the reverse auction.
- (2) In the case of any purchase to meet the needs of a single budget unit, the advertisement shall be published also in a newspaper of general circulation printed in the parish in which the budget unit is situated, or, if there is not a newspaper printed in the parish, in a newspaper printed in the nearest parish that has a general circulation in the parish in which the budget unit is situated.

Proposed law further authorizes all political subdivisions not subject to the La. Procurement Code to adopt proposed law and its accompanying regulations and to conduct reverse auctions. Requires that such reverse auctions be conducted in the manner provided in the La. Procurement Code.

Effective July 1, 2011.

(Amends R.S. 39:1554(E); adds R.S. 38:2271 and R.S. 39:1598.1, 1661(D) and 1671(H))