

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)

1 AN ACT
2 To amend and reenact R.S. 39:1554(E) and to enact Part IV-A of Chapter 10 of Title 38 of
3 the Louisiana Revised Statutes of 1950, to be comprised of R.S. 38:2271, and
4 Subpart B-1 of Part III of Chapter 17 of Subtitle III of Title 39 of the Louisiana
5 Revised Statutes of 1950, comprised of R.S. 39:1598.1, and R.S. 39:1661(D) and
6 1671(H), relative to purchasing by certain public entities; to authorize the use of
7 reverse auctions by certain public entities for the purchase of certain materials,
8 supplies, services, products, or equipment; to provide for public notice; to provide
9 for an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Part IV-A of Chapter 10 of Title 38 of the Louisiana Revised Statutes of
12 1950, to be comprised of R.S. 38:2271, is hereby enacted to read as follows:

13 **PART IV-A. PURCHASE OF MATERIALS, SUPPLIES, OR EQUIPMENT**
14 **BY CERTAIN POLITICAL SUBDIVISIONS USING CERTAIN**
15 **AUCTION METHODS**
16 **§2271. Purchase of materials, supplies, or equipment by certain political**
17 **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.**

1 depending on the structure of the item being bid.

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

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

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

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

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

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

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

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

25 * * *

26 §1661. Contract clauses; administration

27 * * *

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

- (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))