

2016 Regular Session

HOUSE BILL NO. 1009

BY REPRESENTATIVE HAVARD

PROCUREMENT: Requires certain public entities to provide a secure electronic interactive system for submission of competitive sealed bids and proposals as an alternative bidding option

1 AN ACT

2 To amend and reenact R.S. 39:1594(C)(5) and (D) through (I) and 1595(B)(4) and (6)
3 through (12) and to enact R.S. 39:1594(J) and 1595(B)(13), relative to competitive
4 sealed bids and proposals; to provide for electronic submission of bids under certain
5 circumstances; to require a public entity to provide a secure electronic interactive
6 system; to provide for exceptions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 39:1594(C)(5) and (D) through (I) and 1595(B)(4) and (6) through
9 (12) are hereby amended and reenacted and R.S. 39:1594(J) and 1595(B)(13) are hereby
10 enacted to read as follows:

11 §1594. Competitive sealed bids

12 * * *

13 C. Public notice.

14 * * *

15 (5) All bids shall be advertised by a using agency through a centralized
16 electronic interactive environment administered by the division of administration and
17 on the electronic website accepting the electronic bids as provided in this Section.

18 The advertisement or written notice required by this Section shall contain the name
19 and address of the using agency and shall establish the specific date, time, and place
20 by which the bids must be received.

1 D. Bid submission.

2 (1) Bids shall be submitted in writing in accordance with the requirements
3 set forth in the invitation for bids or electronically through a uniform and secure
4 electronic interactive environment.

5 (2) Public entities shall provide, as an additional bidding option, a uniform
6 and secure electronic interactive system for the submission of competitive sealed
7 bids as provided for in this Section. Any public entity providing a secure electronic
8 interactive system shall follow the standards for the receipt of electronic bids
9 adopted by the office of the governor, division of administration, and the office of
10 information technology as provided for in LAC 4:XV.701. Any special condition or
11 requirement for the submission shall be specified in the advertisement for bids
12 required by this Section.

13 (3) The requirements of Paragraph (2) of this Subsection shall not apply to
14 the following public entities:

15 (a) Public entities that are currently without high-speed Internet access, until
16 high-speed Internet access becomes available.

17 (b) Any parish with a police jury form of government and a population of
18 less than twenty thousand.

19 (c) Any city or municipality with a population of less than ten thousand.

20 (d) Any public entity that is unable to comply with the electronic bidding
21 provisions of this Subsection without securing and expending additional funding.

22 E. Bid opening. Bids shall be opened publicly in the presence of one or more
23 witnesses at the time and place designated in the invitation for bids. Each bid,
24 together with the name of the bidder, shall be recorded and open to public inspection.

25 E. ~~F.~~ Bid evaluation.

26 (1) Bids shall be evaluated based on the requirements set forth in the
27 invitation for bids, which may include criteria to determine acceptability such as
28 inspection, testing, quality, workmanship, delivery, and suitability for a particular
29 purpose, and criteria affecting price such as life cycle or total ownership costs. The

1 invitation for bids shall set forth the evaluation criteria to be used. No criteria shall
2 be used in bid evaluation that are not set forth in the invitation for bids.

3 (2) For bids made for housing of state agencies, their personnel, operations,
4 equipment, or activities pursuant to R.S. 39:1643, the criteria for evaluation shall be
5 included in the invitation for bids and shall include, at a minimum, the following:

6 (a) Location of the proposed space.

7 (b) Condition of the proposed space.

8 (c) Suitability of the proposed space for the advertiser's needs.

9 (d) Timeliness of availability of the proposed space.

10 ~~F. G.~~ G. Correction or withdrawal of bids. Patent errors in bids or errors in bids
11 supported by clear and convincing evidence may be corrected, or bids may be
12 withdrawn, if such correction or withdrawal does not prejudice other bidders, and
13 such actions may be taken only to the extent permitted under regulations.

14 ~~G. H.~~ H. Award. The contract shall be awarded with reasonable promptness by
15 written notice to the lowest responsive and responsible bidder whose bid meets the
16 requirements and criteria set forth in the invitation for bids. Award shall be made by
17 unconditional acceptance of a bid without alteration or correction except as
18 authorized in this Chapter.

19 ~~H. I.~~ I. Resident business preference. In state contracts awarded by competitive
20 sealed bidding, resident businesses shall be preferred to nonresident businesses
21 where there is a tie bid and where there will be no sacrifice or loss in quality.

22 ~~I. J.~~ J. Exemption.

23 (1) Purchases of goods manufactured by or services performed by
24 individuals with severe disabilities in state-operated and state-supported sheltered
25 workshops as defined in R.S. 39:1604.4 shall be exempt from the provisions of this
26 Section. This exemption shall also apply to goods and services procured by purchase
27 order directly from a central nonprofit agency contracting under R.S. 39:1604.4 to
28 assist qualified sheltered workshops; any purchase order shall be issued directly to

1 the central nonprofit agency for all goods and services within the exemption
2 provided under this Subsection.

3 (2) Purchases of raw materials and supplies used in the manufacturing
4 process by the Department of Public Safety and Corrections, division of prison
5 enterprises, with the approval of the state chief procurement officer, shall be exempt
6 from the provisions of this Section and shall be procured through the use of written
7 bids.

8 §1595. Competitive sealed proposals

9 * * *

10 B. Requests for proposals

11 * * *

12 (4) All requests for proposals shall be advertised through a centralized
13 electronic interactive environment administered by the division of administration and
14 on the electronic website accepting the electronic bids as provided in this Section.
15 The advertisement or written notice required by this Section shall contain the name
16 and address of the using agency and shall establish the specific date, time, and place
17 by which the request for proposals must be received.

18 * * *

19 (6)(a) Proposals shall be submitted in writing in accordance with the
20 requirements set forth in the request for proposals or electronically through a
21 uniform and secure electronic interactive environment.

22 (b) Public entities shall provide, as an additional option for submission of
23 proposals, a uniform and secure electronic interactive system for the submission of
24 competitive sealed proposals as provided for in this Section. Any public entity
25 providing a secure electronic interactive system shall follow the standards for the
26 receipt of electronic bids adopted by the office of the governor, division of
27 administration, and the office of information technology as provided for in LAC
28 4:XV.701. Any special condition or requirement for the submission shall be
29 specified in the advertisement of the request for proposals required by this Section.

1 (c) The requirements of Subparagraph (b) of this Paragraph shall not apply
2 to the following public entities:

3 (i) Public entities that are currently without high-speed Internet access, until
4 high-speed Internet access becomes available.

5 (ii) Any parish with a police jury form of government and a population of
6 less than twenty thousand.

7 (iii) Any city or municipality with a population of less than ten thousand.

8 (iv) Any public entity that is unable to comply with the electronic proposal
9 submission provisions of this Subsection without securing and expending additional
10 funding.

11 (7) Written or oral discussions shall be conducted with all responsible
12 proposers who submit proposals determined in writing to be reasonably susceptible
13 of being selected for award. Discussions shall not disclose any information derived
14 from proposals submitted by competing proposers. Discussions need not be
15 conducted:

16 (a) If prices are fixed by law or regulation, except that consideration shall be
17 given to competitive terms and conditions.

18 (b) If time of delivery or performance will not permit discussions.

19 (c) If it can be clearly demonstrated and documented from the existence of
20 adequate competition or accurate prior cost experience with the particular service
21 that acceptance of an initial offer without discussion would result in fair and
22 reasonable prices, and the request for proposals notifies all proposers of the
23 possibility that award may be made on the basis of the initial offers.

24 ~~(7)(a)~~ (8)(a) Award shall be made to the responsible proposer whose proposal
25 is determined in writing by the using agency to be the most advantageous to the state,
26 taking into consideration review of price and the evaluation factors set forth in the
27 request for proposals.

1 (b) A request for proposals or other solicitation may be cancelled or all
2 proposals may be rejected only if it is determined, based on reasons provided in
3 writing, that such action is taken in the best interest of the state.

4 ~~(8)~~ (9) A request for proposals or other solicitation may be cancelled or all
5 proposals may be rejected only if it is determined, based on reasons provided in
6 writing, that such action is taken in the best interest of the state.

7 ~~(9)~~ (10) Each contract entered into pursuant to this Subsection shall contain
8 as a minimum:

9 (a) Description of the work to be performed or objectives to be met, when
10 applicable.

11 (b) Amount and time of payments to be made.

12 (c) Description of reports or other deliverables to be received, when
13 applicable.

14 (d) Date of reports or other deliverables to be received, when applicable.

15 (e) Responsibility for payment of taxes, when applicable.

16 (f) Circumstances under which the contract can be terminated either with or
17 without cause.

18 (g) Remedies for default.

19 (h) A statement giving the legislative auditor the authority to audit records
20 of the individual or firm.

21 (i) Performance measurements.

22 (j) Monitoring plan.

23 ~~(10)~~~~(a)~~ (11)(a) Upon entering into a contract, the using agency shall have full
24 responsibility for the diligent administration and monitoring of the contract. The
25 state chief procurement officer may require the using agency to report at any time
26 on the status of any such outstanding contracts to which the using agency is a party.
27 After completion of performance under a contract, the using agency shall evaluate
28 contract performance and the utility of the final product. This evaluation shall be
29 delivered to the state chief procurement officer or his designee or the director of

1 purchasing at a college or university, as applicable, within one hundred twenty days
2 after completion of performance and shall be retained in the official contract file.

3 (b)(i) No contract shall be valid, nor shall the state be bound by the contract,
4 until it has first been executed by the head of the using agency, or his designee,
5 which is a party to the contract and the contractor and has been approved in writing
6 by the state chief procurement officer or his designee or the director of purchasing
7 at a college or university, as applicable.

8 (ii) In cases where the head of the using agency wants to delegate authority
9 to one or more of his subordinates to sign contracts on behalf of the agency, this
10 delegation shall be made in accordance with regulations of the commissioner and
11 shall be subject to the approval of the state chief procurement officer.

12 ~~(11)~~ (12) Requests for proposals shall not be required for "interagency
13 contracts" as defined in R.S. ~~39:1556(29)~~ 39:1556(30).

14 ~~(12)~~ (13) Notwithstanding the provisions of this Chapter, all relevant federal
15 statutes and regulations shall be followed by the using agency in procuring services.
16 The burden of complying with these federal statutes and regulations shall rest with
17 the using agency and shall be documented in the contract record submitted to the
18 office of state procurement.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1009 Reengrossed

2016 Regular Session

Havard

Abstract: Requires the electronic submission of competitive sealed bids and proposals on a secure electronic interactive system as an alternative bidding option.

Present law requires certain public entity contracts exceeding an amount provided for in present law to be awarded through competitive sealed bidding. Further requires public notice of an invitation for bids and requires all bids to be opened publicly. Present law establishes criteria for evaluating bids and for awarding contracts.

Present law authorizes a competitive request for proposals process for procurement of certain items when the commissioner of administration approves and the state chief procurement officer determines it is in the best interest of the state. Further requires public notice of the request for proposals and establishes criteria for evaluating proposals and for awarding contracts.

Proposed law retains present law, but additionally requires a public entity to provide a secure electronic interactive system for submission of competitive sealed bids and proposals. Further requires that the system be established using the same standards adopted for secure electronic interactive systems used for receiving bids for public works, as provided for in present law.

Proposed law provides for exceptions to the requirement that a public entity provide a secure electronic interactive system for the following public entities:

- (1) Public entities that are currently without high-speed Internet access, until high-speed Internet access becomes available.
- (2) Any parish with a police jury form of government and a population of less than 20,000.
- (3) Any city or municipality with a population of less than 10,000.
- (4) Any public entity that is unable to comply with the electronic proposal submission provisions of proposed law without securing and expending additional funding.

(Amends R.S. 39:1594(C)(5) and (D)-(I) and 1595(B)(4) and (6)-(12); Adds R.S. 39:1594(J) and 1595(B)(13))