

SENATE BILL NO. 83

BY SENATOR DONAHUE

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

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**

18 **A.(1) The bidding provisions of this Chapter shall not apply when a**
19 **political subdivision purchases materials, supplies, or equipment using a reverse**
20 **auction as authorized by, and in the manner provided in, this Part. A political**

1 subdivision may use reverse auction only with the determination by its
2 procurement officer that the best interests of the political subdivision would be
3 served and that electronic online bidding is more advantageous than other
4 procurement methods provided in this Chapter.

5 (2) For the purposes of this Part:

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

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

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

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

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

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

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

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

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

1 basis.

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

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

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

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

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

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

20 §1554. Application of this Chapter

21 * * *

22 E.(1) Political subdivisions authorized to adopt this Chapter. The
23 procurement of supplies, services, major repairs, and construction by political
24 subdivisions of this state shall be in accordance with the provisions of ~~R.S. 38:2181~~
25 ~~through 38:2316~~ Chapter 10 of Title 38 of the Louisiana Revised Statutes of
26 1950, except that all political subdivisions are authorized to adopt all or any part of
27 this Chapter and its accompanying regulations.

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

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SUBPART B-1. CERTAIN AUCTION METHODS

§1598.1. Reverse auction

A.(1) Notwithstanding the provisions of Subpart B of this Part, with the approval of the state director of 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 this Chapter, a reverse auction may be utilized for the acquisition of materials, supplies, services, products, or equipment.

(2) For purposes of this Subpart, "reverse auction" means 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.

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

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

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

(3) The solicitation shall designate an opening date and time and the closing date and time. The closing date and time may be fixed or remain open depending on the nature 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;

1 only the successively lower prices, ranks, scores, and related bid details shall be
2 revealed.

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

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

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

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

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

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

19 * * *

20 §1661. Contract clauses; administration

21 * * *

22 D. Regulations may permit or require the inclusion in state contracts of
23 clauses relative to reverse auctions pursuant to the implementation of the
24 provisions of R.S. 39:1598.1.

25 §1671. Authority to resolve protested solicitations and awards

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

30 Section 3. This Act shall become effective on July 1, 2011; if vetoed by the governor

1 and subsequently approved by the legislature, this Act shall become effective on July 1,
2 2011, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____