

CHAPTER 185
SB 86 – FINAL VERSION

03/12/2015 0741s
6May2015... 1207h
05/28/2015 1996EBA

2015 SESSION

15-0909
08/01

SENATE BILL **86**

AN ACT relative to state procurement of goods and services.

SPONSORS: Sen. Carson, Dist 14; Sen. Forrester, Dist 2; Sen. Boutin, Dist 16;
Rep. C. McGuire, Merr 29; Rep. P. Schmidt, Straf 19; Rep. Danielson, Hills 7

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill specifies the information related to state procurement of goods and services which shall be available to the public.

This bill also includes ethical guidelines for relationships between vendors and agency members.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to state procurement of goods and services.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 185:1 New Subdivision; Requests for Financial Information Regarding Requests for Bids or
2 Requests for Proposals. Amend RSA 21-G by inserting after section 35 the following new
3 subdivision:

Financial Information Regarding Requests for Bids and Proposals

4 21-G:36 Definitions. In this subdivision:

5 I. “Agency” means any executive branch department, commission, board, institution, bureau,
6 office, or other executive branch entity established in the state constitution, statutes, session laws, or
7 executive orders.

8 II. “Bidder” means a contractor, supplier, or vendor who responds to an RFB, RFP, RFA, or
9 similar request for submission with an offer to sell goods or services.

10 III. “Request for application (RFA)” means an invitation to submit an offer to provide
11 identified services to an agency where the amount of funding available and the particulars of how
12 the services are to be provided are defined by the agency and where the selection of qualifying
13 vendors will be according to identified criteria as provided in RSA 21-I:22-a and RSA 21-I:22-b.

14 IV. “Request for bid (RFB)” means an invitation to submit an offer to provide specified
15 commodities or services to an agency at a price proposed by the bidder where selection is based on
16 the lowest price meeting or exceeding specifications as stated in the bid.

17 V. “Request for proposal (RFP)” means an invitation to submit a proposal to provide
18 specified goods or services, where the particulars of the goods or services and the price are proposed
19 by the vendor and, for proposals meeting or exceeding specifications, selection is according to
20 identified criteria as provided in RSA 21-I:22-a and RSA 21-I:22-b.

21 VI. “Selected vendor” means the qualified bidder which has been identified by the agency as
22 having received the best score for its proposal according to the criteria set forth in an RFP, RFA, or
23 similar request for submission, as provided in RSA 21-I:22-a and RSA 21-I:22-b, or which has been
24 identified by the agency as providing the best price as set forth in an RFB.

25 VII. “Vendor” means a person or entity who offers products or services for sale.

26 21-G:37 Financial Information Regarding Requests for Bids or Requests for Proposals.
27

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1 I. In order to protect the integrity of the bidding process, notwithstanding RSA 91-A:4, no
2 information shall be available to the public, or to the members of the general court or its staff
3 concerning specific responses to requests for bids (RFBs), requests for proposals (RFPs), requests for
4 applications (RFAs), or similar requests for submission for the purpose of procuring goods or services
5 or awarding contracts from the time the request is made public until the closing date for responses.

6 II. On the closing date for responses, the agency shall:

7 (a) In the case of an RFB, hold a public bid opening at which it shall disclose the name of
8 the bidders which submitted timely bids and the prices offered.

9 (b) In the case of an RFP, RFA, or similar request for submission, post the number of
10 responses received on the agency website.

11 III. Notwithstanding RSA 91-A:4, no information other than that specified in paragraph II
12 shall be available to the public or to the members of the general court or its staff concerning specific
13 RFBs, RFPs, RFAs, or similar requests for submission made by any state agency from the closing
14 date for responses until the contract negotiations with the selected vendor are completed, as
15 determined by the issuing agency except:

16 (a) In the case of an RFB that requires approval from the governor and executive
17 council, the issuing agency shall, at least 5 business days prior to submitting the contract to the
18 department of administrative services, post the vendors' names and respective prices for each
19 responding vendor on its website.

20 (b) In the case of an RFB that does not require approval from the governor and executive
21 council, the issuing agency shall, at minimum, post the vendors' names and respective prices for each
22 responding vendor on its website at the time that the RFB is awarded.

23 (c) In the case of an RFP, RFA, or similar request for submission that requires approval
24 from the governor and executive council, the issuing agency shall, at least 5 business days prior to
25 submitting the proposed contract to the department of administrative services, post the rank or score
26 for each responding vendor on its website.

27 (d) In the case of an RFP, RFA, or similar request for submission that does not require
28 approval from the governor and executive council, the issuing agency shall, at least 5 business days
29 before final approval of the proposed contract by the appropriate agency authority, post the rank or
30 score for each responding vendor on its website.

31 IV. A bidder questioning an agency's identification of the selected vendor may request that
32 the agency review its selection process. Such request shall be made in writing and be received by the
33 agency within 5 business days after the rank or score is posted on the agency website. The request
34 shall specify all points on which the bidder believes the agency erred in its process and shall contain
35 such argument in support of its position as the bidder seeks to present. In response, the issuing
36 agency shall review the process it followed for evaluating responses and, within 5 business days of

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1 receiving the request for review, issue a written response either affirming its initial selection of a
2 vendor or canceling the bid. In its request for review, a bidder shall not submit, and an agency shall
3 not accept nor consider, any substantive information that was not included by the bidder in its
4 original bid response. No hearing shall be held in conjunction with a review. The outcome of the
5 agency's review shall not be subject to appeal.

6 V. The head of the issuing agency may waive the requirements of paragraphs II through IV
7 in the event of an emergency situation or to prevent the loss of federal or other funds subject to
8 recapture. Each agency shall adopt rules, pursuant to RSA 541-A, relative to circumstances
9 constituting an emergency or loss of funding under this paragraph.

10 VI.(a) When an agency cancels an RFB, RFP, RFA, or similar request for submission,
11 terminates the selection process, or otherwise does not select a bidder, no information shall be
12 available to the public or to the members of the general court or its staff concerning the RFB, RFP,
13 RFA, or similar request for submission, notwithstanding the provisions of RSA 91-A:4, for a period of
14 2 years following the cancellation, termination, or other non-selection, subject to subparagraph (b).

15 (b) If, within 2 years following the cancellation, termination, or other non-selection, a
16 new RFB, RFP, RFA, or similar request for submissions is issued, which the issuing agency
17 determines is substantially related to the original RFB, RFP, RFA, or similar request for submission,
18 information concerning the original bid or proposal shall, if requested and upon payment of any costs
19 established pursuant to RSA 91-A: 4, IV, be made available only after selection of a bidder on the
20 new request for submission, but only to the extent that such information is not exempt from
21 disclosure under RSA 91-A: 5 or other law.

22 21-G:38 Ethics.

23 I. From the time the bid is published until a contract is awarded, no bidder shall offer or
24 give, directly or indirectly, any gift, expense reimbursement, or honorarium, as defined by RSA 15-B,
25 to any elected official, public official, public employee, constitutional official, or family member of any
26 such official or employee who will select, evaluate, or award an RFB, RFP, RFA, or similar request
27 for submission.

28 II. No elected official, public official, public employee, constitutional official, or family
29 member of any such official or employee who was, is, or will be involved in the selection, evaluation,
30 or award of an RFB, RFP, RFA, or similar request for submission, shall accept any gift, expense
31 reimbursement, or honorarium, as defined in RSA 15-B, from a bidder.

32 III. Each agency and executive branch official and employee shall avoid any situation that
33 might constitute a conflict of interest, misuse of position, or otherwise violate the code of ethics
34 under RSA 21-G:21-27.

35 185:2 Cross Reference; Legislative Budget Assistant. Amend RSA 14:31, V to read as follows:

36 V. The commissioner of administrative services shall deliver to the legislative budget

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1 assistant the official financial information under the control of the commissioner as required by this
2 section in a form unaltered from that which is finally reported in the integrated financial system.
3 The approval of the governor, the speaker of the house of representatives, and the senate president
4 shall be required for delivery of any other information, other than the official financial information
5 required by this section. The right of access to information under this section shall not arise until
6 after each transaction or event subject to RSA 91-A has taken place. Such information shall be
7 provided to the legislative budget assistant in a mutually agreeable and compatible format at the
8 end of each business day. The legislative budget assistant shall be subject to the provisions of
9 ~~[RSA 21-I:13-a, II]~~ **RSA 21-G:37, I-III**. This paragraph shall not be construed as granting the
10 legislative budget assistant access to any information or any information system relative to the
11 internal functions of the office of the governor or any executive agency, department, board,
12 commission, or institution through the integrated financial system.

13 185:3 State Procurement Study Committee Extended. Amend 2014, 221:4, V to read as follows:

14 V. The committee shall report its findings and any recommendations for proposed legislation
15 to the president of the senate, the speaker of the house of representatives, the senate clerk, the
16 house clerk, the governor, and the state library on or before November 1, ~~[2014]~~ **2015**.

17 185:4 Repeal. RSA 21-I:13-a, II, relative to certain requests for financial information not
18 available to the public, is repealed.

19 185:5 Effective Date:

20 I. Section 3 of this act shall take effect upon its passage.

21 II. The remainder of this act shall take effect January 1, 2016.

22
23 Approved: Enacted in accordance with Part II, Article 44 of N.H. Constitution, June 30, 2015.

24 Effective Date: I. Section 3 shall take effect June 30, 2015

25 II. Remainder shall take effect January 1, 2016