

STATE OF NEW YORK

7709--A

2021-2022 Regular Sessions

IN ASSEMBLY

May 20, 2021

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- reported and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to procurements conducted by the New York city transit authority and the metropolitan transportation authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 8 of section 1209 of the
2 public authorities law, as amended by chapter 725 of the laws of 1993,
3 is amended to read as follows:
4 (a) Advertisement for bids, when required by this section, shall be
5 published at least once in a newspaper of general circulation in the
6 area served by the authority and in the procurement opportunities news-
7 letter published pursuant to article four-C of the economic development
8 law provided that, notwithstanding the provisions of article four-C of
9 the economic development law, an advertisement shall only be required
10 when required by this section. Publication in a newspaper of general
11 circulation in the area served or in the procurement opportunities news-
12 letter shall not be required if bids for contracts for supplies, materi-
13 als or equipment are of a type regularly purchased by the authority and
14 are to be solicited from a list of potential suppliers, if such list is
15 or has been developed consistent with the provisions of subdivision
16 eleven of this section. Any such advertisement shall contain a statement
17 of: (i) the time and place where bids received pursuant to any notice
18 requesting sealed bids will be publicly opened and read; (ii) the name
19 of the contracting agency; (iii) the contract identification number;
20 (iv) a brief description of the public work, supplies, materials, or

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 equipment sought, the location where work is to be performed, goods are
2 to be delivered or services provided and the contract term; (v) the
3 address where bids or proposals are to be submitted; (vi) the date when
4 bids or proposals are due; (vii) a description of any eligibility or
5 qualification requirement or preference; (viii) a statement as to whether
6 the contract requirements may be fulfilled by a subcontracting, joint
7 venture, or co-production arrangement; (ix) any other information deemed
8 useful to potential contractors; and (x) the name, address, and telephone
9 number of the person to be contacted for additional information.

10 At least [~~fifteen~~] ten business days shall elapse between the first
11 publication of such advertisement or the solicitation of bids, as the
12 case may be, and the date of opening and reading of bids provided that
13 at least fifteen business days shall elapse between the first publica-
14 tion of such advertisement or the solicitation of bids, as the case may
15 be, and the date of opening and reading of bids for public work
16 contracts.

17 § 2. Paragraph (e) of subdivision 9 of section 1209 of the public
18 authorities law, as added by chapter 929 of the laws of 1986, is amended
19 to read as follows:

20 (e) the item is available through an existing contract [~~between a~~
21 ~~vendor and (i) another public authority provided that such other author-~~
22 ~~ity utilized a process of competitive bidding or a process of compet-~~
23 ~~itive requests for proposals to award such contract or (ii) the state of~~
24 ~~New York or the city of New York, provided that in any case when the~~
25 ~~authority under this paragraph determines that obtaining such item~~
26 ~~thereby would be in the public interest and sets forth the reasons for~~
27 ~~such determination] let by any department, agency or instrumentality of
28 the United States government and/or any department, agency, office,
29 political subdivision or instrumentality of any state or states. The
30 authority shall document in the procurement record its rationale for the
31 use of such a contract. Such rationale shall include, but need not be
32 limited to, a determination of need, a consideration of the procurement
33 method by which the contract was awarded, an analysis of alternative
34 procurement sources including an explanation why a competitive procure-
35 ment or the use of a centralized contract let by the commissioner of the
36 office of general services is not in the best interest of the authority,
37 and the reasonableness of cost. The authority shall accept sole respon-
38 sibility for any payment due the vendor as a result of the authority's
39 order; or~~

40 § 3. Subdivision 10 of section 1209 of the public authorities law, as
41 added by chapter 929 of the laws of 1986, is amended to read as follows:

42 10. Upon the adoption of a resolution by the authority stating, for
43 reasons of efficiency, economy, compatibility or maintenance reliabil-
44 ity, that there is a need for standardization, the authority may estab-
45 lish procedures whereby particular supplies, materials or equipment are
46 identified on a qualified products list. Such procedures shall provide
47 for products or vendors to be added to or deleted from such list and
48 shall include provisions for public advertisement of the manner in which
49 such lists are compiled. The authority shall review such list no less
50 than [~~twice~~] once a year for the purpose of making modifications there-
51 to. Contracts for particular supplies, materials or equipment identi-
52 fied on a qualified products list may be awarded by the authority to the
53 lowest responsible bidder after obtaining sealed bids in accordance with
54 this section or without competitive sealed bids in instances when the
55 item is available from only a single source, except that the authority
56 may dispense with advertising provided that it mails copies of the invi-

1 tation to bid to all vendors of the particular item on the qualified
2 products list.

3 § 4. Paragraph (a) of subdivision 3 of section 1265-a of the public
4 authorities law, as amended by chapter 494 of the laws of 1990, is
5 amended to read as follows:

6 (a) Advertisement for bids, when required by this section, shall be
7 published at least once in a newspaper of general circulation in the
8 area served by the authority and in the procurement opportunities news-
9 letter published pursuant to article four-C of the economic development
10 law provided that, notwithstanding the provisions of article four-C of
11 the economic development law, an advertisement shall only be required
12 for a purchase contract for supplies, materials or equipment when
13 required by this section. Publication in a newspaper of general circu-
14 lation in the area served or in the procurement opportunities newsletter
15 shall not be required if bids for contracts for supplies, materials or
16 equipment are of a type regularly purchased by the authority and are to
17 be solicited from a list of potential suppliers, if such list is or has
18 been developed consistent with the provisions of subdivision six of this
19 section. Any such advertisement shall contain a statement of: (i) the
20 time and place where bids received pursuant to any notice requesting
21 sealed bids will be publicly opened and read; (ii) the name of the
22 contracting agency; (iii) the contract identification number; (iv) a
23 brief description of the public work, supplies, materials, or equipment
24 sought, the location where work is to be performed, goods are to be
25 delivered or services provided and the contract term; (v) the address
26 where bids or proposals are to be submitted; (vi) the date when bids or
27 proposals are due; (vii) a description of any eligibility or qualifica-
28 tion requirement or preference; (viii) a statement as to whether the
29 contract requirements may be fulfilled by a subcontracting, joint
30 venture, or co-production arrangement; (ix) any other information deemed
31 useful to potential contractors; and (x) the name, address, and tele-
32 phone number of the person to be contacted for additional information.
33 At least ~~[fifteen]~~ ten business days shall elapse between the first
34 publication of such advertisement or the solicitation of bids, as the
35 case may be, and the date of opening and reading of bids provided that
36 at least fifteen business days shall elapse between the first publica-
37 tion of such advertisement or the solicitation of bids, as the case may
38 be, and the date of opening and reading of bids for public work
39 contracts.

40 § 5. Paragraph (e) of subdivision 4 of section 1265-a of the public
41 authorities law, as added by chapter 929 of the laws of 1986, is amended
42 to read as follows:

43 (e) the item is available through an existing contract ~~[between a~~
44 ~~vendor and (i) another public authority provided that such other author-~~
45 ~~ity utilized a process of competitive bidding or a process of compet-~~
46 ~~itive requests for proposals to award such contracts or (ii) Nassau~~
47 ~~county, or (iii) the state of New York or (iv) the city of New York,~~
48 ~~provided that in any case when under this paragraph the authority deter-~~
49 ~~mines that obtaining such item thereby would be in the public interest~~
50 ~~and sets forth the reasons for such determination]~~ let by any depart-
51 ment, agency or instrumentality of the United States government and/or
52 any department, agency, office, political subdivision or instrumentality
53 of any state or states. The authority shall document in the procurement
54 record its rationale for the use of such a contract. Such rationale
55 shall include, but need not be limited to, a determination of need, a
56 consideration of the procurement method by which the contract was

1 awarded, an analysis of alternative procurement sources including an
2 explanation why a competitive procurement or the use of a centralized
3 contract let by the commissioner of the office of general services is
4 not in the best interest of the authority, and the reasonableness of
5 cost. The authority shall accept sole responsibility for any payment due
6 the vendor as a result of the authority's order; or

7 § 6. Subdivision 5 of section 1265-a of the public authorities law, as
8 added by chapter 929 of the laws of 1986, is amended to read as follows:

9 5. Upon the adoption of a resolution by the authority stating, for
10 reasons of efficiency, economy, compatibility or maintenance reliabil-
11 ity, that there is a need for standardization, the authority may estab-
12 lish procedures whereby particular supplies, materials or equipment are
13 identified on a qualified products list. Such procedures shall provide
14 for products or vendors to be added to or deleted from such list and
15 shall include provisions for public advertisement of the manner in which
16 such lists are compiled. The authority shall review such list no less
17 than [~~twice~~] once a year for the purpose of making such modifications.
18 Contracts for particular supplies, materials or equipment identified on
19 a qualified products list may be awarded by the authority to the lowest
20 responsible bidder after obtaining sealed bids in accordance with this
21 section or without competitive sealed bids in instances when the item is
22 available from only a single source, except that the authority may
23 dispense with advertising provided that it mails copies of the invita-
24 tion to bid to all vendors of the particular item on the qualified
25 products list.

26 § 7. Paragraph (b) of subdivision 7 of section 1209 of the
27 public authorities law, as amended by section 3 of subpart C of part ZZZ
28 of chapter 59 of the laws of 2019, is amended to read as follows:

29 (b) Section twenty-eight hundred seventy-nine of this chapter shall
30 apply to the authority's acquisition of goods or services of any kind,
31 in the actual or estimated amount of fifteen thousand dollars or more,
32 provided that (i) a contract for services in the actual or estimated
33 amount of one million dollars or less shall not require approval by the
34 board of the authority regardless of the length of the period over which
35 the services are rendered, and provided further that a contract for
36 services in the actual or estimated amount in excess of one million
37 dollars shall require approval by the board of the authority regardless
38 of the length of the period over which the services are rendered unless
39 such a contract is awarded to the lowest responsible bidder after
40 obtaining sealed bids and (ii) the board of the authority may by resol-
41 ution adopt guidelines that authorize the award of contracts to small
42 business concerns, to service disabled veteran owned businesses certi-
43 fied pursuant to article seventeen-B of the executive law, or minority
44 or women-owned business enterprises certified pursuant to article
45 fifteen-A of the executive law, or purchases of goods or technology that
46 are recycled or remanufactured, in an amount not to exceed one million
47 five hundred thousand dollars without a formal competitive process and
48 without further board approval. The board of the authority shall adopt
49 guidelines which shall be made publicly available for the awarding of
50 such contract without a formal competitive process.

51 § 8. Paragraph (b) of subdivision 2 of section 1265-a of the public
52 authorities law, as amended by section 3-a of subpart C of part ZZZ of
53 chapter 59 of the laws of 2019, is amended to read as follows:

54 (b) Section twenty-eight hundred seventy-nine of this chapter shall
55 apply to the authority's acquisition of goods or services of any kind,
56 in the actual or estimated amount of fifteen thousand dollars or more,

provided (i) that a contract for services in the actual or estimated amount of one million dollars or less shall not require approval by the board of the authority regardless of the length of the period over which the services are rendered, and provided further that a contract for services in the actual or estimated amount in excess of one million dollars shall require approval by the board of the authority regardless of the length of the period over which the services are rendered unless such a contract is awarded to the lowest responsible bidder after obtaining sealed bids, and (ii) the board of the authority may by resolution adopt guidelines that authorize the award of contracts to small business concerns, to service disabled veteran owned businesses certified pursuant to article seventeen-B of the executive law, or minority or women-owned business enterprises certified pursuant to article fifteen-A of the executive law, or purchases of goods or technology that are recycled or remanufactured, in an amount not to exceed one million five hundred thousand dollars without a formal competitive process and without further board approval. The board of the authority shall adopt guidelines which shall be made publicly available for the awarding of such contract without a formal competitive process.

§ 9. Subdivision 1 of section 1264 of the public authorities law, as amended by section 2 of subpart B of part ZZZ of chapter 59 of the laws of 2019, is amended to read as follows:

1. The purposes of the authority shall be the continuance, further development and improvement of commuter transportation and other services related thereto within the metropolitan commuter transportation district, including but not limited to such transportation by railroad, omnibus, marine and air, in accordance with the provisions of this title. It shall be the further purpose of the authority, consistent with its status as the ex officio board of both the New York city transit authority and the triborough bridge and tunnel authority, to develop and implement a unified mass transportation policy for such district in an efficient and cost-effective manner that includes the use of design-build contracting on all projects over ~~[twenty-five]~~ two hundred million dollars in cost for new construction and all projects over four hundred million dollars in cost for projects that are predominantly rehabilitation or replacement of existing assets except where a waiver is granted by the New York state budget director pursuant to a request in writing from the metropolitan transportation authority. For purposes of granting a waiver pursuant to this section, such review shall consider whether the design build contracting method is appropriate for the project that such waiver is sought for, and the amount of savings and efficiencies that could be achieved using such method. The determination for such waiver shall be made in writing within forty-five days from request or shall be deemed granted.

§ 10. This act shall take effect immediately, provided, however, that:

(a) the amendment to paragraph (b) of subdivision 7 of section 1209 of the public authorities law made by section seven of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith; and

(b) the amendment to paragraph (b) of subdivision 2 of section 1265-a of the public authorities law made by section eight of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.