

STATE OF NEW YORK

8569--A

IN SENATE

March 15, 2022

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation -- 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
21 equipment sought, the location where work is to be performed, goods are
22 to be delivered or services provided and the contract term; (v) the
23 address where bids or proposals are to be submitted; (vi) the date when
24 bids or proposals are due; (vii) a description of any eligibility or
25 qualification requirement or preference; (viii) a statement as to wheth-

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

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er the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (ix) any other information deemed useful to potential contractors; and (x) the name, address, and telephone number of the person to be contacted for additional information. At least ~~[fifteen]~~ ten business days shall elapse between the first publication of such advertisement or the solicitation of bids, as the case may be, and the date of opening and reading of bids provided that at least fifteen business days shall elapse between the first publication of such advertisement or the solicitation of bids, as the case may be, and the date of opening and reading of bids for public work contracts.

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

(e) the item is available through an existing contract ~~[between a vendor and (i) another public authority provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contract or (ii) the state of New York or the city of New York, provided that in any case when the authority under this paragraph determines that obtaining such item thereby would be in the public interest and sets forth the reasons for such determination]~~ let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states. The authority shall document in the procurement record its rationale for the use of such a contract. Such rationale shall include, but need not be limited to, a determination of need, a consideration of the procurement method by which the contract was awarded, an analysis of alternative procurement sources including an explanation why a competitive procurement or the use of a centralized contract let by the commissioner of the office of general services is not in the best interest of the authority, and the reasonableness of cost. The authority shall accept sole responsibility for any payment due the vendor as a result of the authority's order; or

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

10. Upon the adoption of a resolution by the authority stating, for reasons of efficiency, economy, compatibility or maintenance reliability, that there is a need for standardization, the authority may establish procedures whereby particular supplies, materials or equipment are identified on a qualified products list. Such procedures shall provide for products or vendors to be added to or deleted from such list and shall include provisions for public advertisement of the manner in which such lists are compiled. The authority shall review such list no less than ~~[twice]~~ once a year for the purpose of making modifications thereto. Contracts for particular supplies, materials or equipment identified on a qualified products list may be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in accordance with this section or without competitive sealed bids in instances when the item is available from only a single source, except that the authority may dispense with advertising provided that it mails copies of the invitation to bid to all vendors of the particular item on the qualified products list.

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

(a) Advertisement for bids, when required by this section, shall be published at least once in a newspaper of general circulation in the area served by the authority and in the procurement opportunities newsletter published pursuant to article four-C of the economic development law provided that, notwithstanding the provisions of article four-C of the economic development law, an advertisement shall only be required for a purchase contract for supplies, materials or equipment when required by this section. Publication in a newspaper of general circulation in the area served or in the procurement opportunities newsletter shall not be required if bids for contracts for supplies, materials or equipment are of a type regularly purchased by the authority and are to be solicited from a list of potential suppliers, if such list is or has been developed consistent with the provisions of subdivision six of this section. Any such advertisement shall contain a statement of: (i) the time and place where bids received pursuant to any notice requesting sealed bids will be publicly opened and read; (ii) the name of the contracting agency; (iii) the contract identification number; (iv) a brief description of the public work, supplies, materials, or equipment sought, the location where work is to be performed, goods are to be delivered or services provided and the contract term; (v) the address where bids or proposals are to be submitted; (vi) the date when bids or proposals are due; (vii) a description of any eligibility or qualification requirement or preference; (viii) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture, or co-production arrangement; (ix) any other information deemed useful to potential contractors; and (x) the name, address, and telephone number of the person to be contacted for additional information. At least ~~[fifteen]~~ ten business days shall elapse between the first publication of such advertisement or the solicitation of bids, as the case may be, and the date of opening and reading of bids provided that at least fifteen business days shall elapse between the first publication of such advertisement or the solicitation of bids, as the case may be, and the date of opening and reading of bids for public work contracts.

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

(e) the item is available through an existing contract ~~[between a vendor and (i) another public authority provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contracts or (ii) Nassau county, or (iii) the state of New York or (iv) the city of New York, provided that in any case when under this paragraph the authority determines that obtaining such item thereby would be in the public interest and sets forth the reasons for such determination]~~ let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states. The authority shall document in the procurement record its rationale for the use of such a contract. Such rationale shall include, but need not be limited to, a determination of need, a consideration of the procurement method by which the contract was awarded, an analysis of alternative procurement sources including an explanation why a competitive procurement or the use of a centralized contract let by the commissioner of the office of general services is not in the best interest of the authority, and the reasonableness of

1 cost. The authority shall accept sole responsibility for any payment due
2 the vendor as a result of the authority's order; or

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

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

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

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

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

50 (b) Section twenty-eight hundred seventy-nine of this chapter shall
51 apply to the authority's acquisition of goods or services of any kind,
52 in the actual or estimated amount of fifteen thousand dollars or more,
53 provided (i) that a contract for services in the actual or estimated
54 amount of one million dollars or less shall not require approval by the
55 board of the authority regardless of the length of the period over which
56 the services are rendered, and provided further that a contract for

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

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

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

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

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

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