

STATE OF NEW YORK

8569--B

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 -- 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:

Section 1. 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. 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

§ 2. 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 estab-

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

LBD11398-06-2

lish 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.

§ 3. 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 or (v) the United States general services administration provided that such administration utilized a process of competitive bidding or a process of competitive requests for proposals to award such contract, 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. 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

§ 4. Subdivision 5 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:

5. 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 such modifications. 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.

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

(a) Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of one million five hundred thousand dollars and all contracts for public work involving an estimated expenditure in excess of one million five hundred thousand dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. The aforesaid shall not apply to contracts for personal, architectural, engineering or other professional services. The authority may reject all bids and obtain new bids in the manner provided by this section when it is deemed in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids, award the contract to any of such bidders or obtain new bids from such bidders. Nothing in this paragraph shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and salvage or disposal. Provided further that the authority shall submit reports to the committee on finance and the committee on capital program oversight on any change orders exceeding fifty thousand dollars and on any change orders for any project whose original value is two hundred fifty thousand dollars or more which shall be made publicly available no less than once every three months.

(b) Section twenty-eight hundred seventy-nine of this chapter shall apply to the authority's acquisition of goods or services of any kind, in the actual or estimated amount of fifteen thousand dollars or more, provided that (i) a contract for services in the actual or estimated amount of one million five hundred thousand 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 five hundred thousand 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.

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

(a) Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of one million five hundred thousand dollars and all contracts for public work involving an estimated expenditure in excess of one million five hundred thousand dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. For purposes hereof, contracts for public work shall exclude contracts for personal, engineering and architectural, or professional services. The authority may reject all bids and obtain new bids in the manner provided by this section when it is deemed in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids, award the contract to any of such bidders or obtain new bids from such bidders. Nothing in this paragraph shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and salvage or disposal. Provided further that the authority shall submit reports to the committee on finance and the committee on capital program oversight on any change orders exceeding fifty thousand dollars and on any change orders for any project whose original value is two hundred fifty thousand dollars or more which shall be made publicly available no less than once every three months.

(b) Section twenty-eight hundred seventy-nine of this chapter shall apply to the authority's acquisition of goods or services of any kind, 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 five hundred thousand 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 five hundred thousand 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.

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

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

1 (b) the amendments to paragraphs (a) and (b) of subdivision 2 of
2 section 1265-a of the public authorities law made by section six of this
3 act shall not affect the expiration of such paragraphs and shall be
4 deemed to expire therewith.