S T A T E O F N E W Y O R K

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I N A S S E M B L Y

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Introduced by M. of A. BRENNAN, COLTON, PERRY, SCARBOROUGH, GLICK, JACOBS, MARKEY, ORTIZ, ROBINSON, ABBATE -- Multi-Sponsored by -- M. of A. PHEFFER -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the purchase and delivery of material goods, supplies and services by or to the chancellor of the city school district of the city of New York

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 36 of section 2590-h of the education law, as amended by chapter 345 of the laws of 2009, is amended to read as follows:

36. [Develop a procurement policy for the city school district of the city of New York and the community districts and public schools therein to ensure the wise and prudent use of public money in the best interest of the taxpayers of the state; guard against favoritism, improvidence, extravagance, fraud, and corruption; and ensure that contracts are awarded consistent with law and on the basis of best value, including, but not limited to, the following criteria: quality, cost and efficiency.

(a) Such policy shall specifically include:

(i) a competitive sealed bidding process for the awarding of contracts in which sealed bids are publicly solicited and opened and that a contract is awarded to the lowest responsive, responsible bidder;

(ii) processes for awarding contracts using alternatives to competitive sealed bidding where competitive sealed bidding is not practicable or not advantageous, in which case the most competitive alternative method of procurement, which is appropriate under the circumstances, shall be used consistent with the requirements of subparagraph (vii) of this paragraph;

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

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(iii) measures to enhance the ability of minority and women owned business enterprises to compete for contracts and to ensure their meaningful participation in the procurement process;

(iv) the manner for administering contracts and overseeing the performance of contracts and contractors;

(v) standards and procedures to be used in determining whether bidders are responsible;

(vi) circumstances under which procurement may be used for the provision of technical, consultant or personal services;

(vii) requiring written justification for the basis, including the efficiency, benefit, and necessity, for awarding a contract using procurement methods other than competitive sealed bidding including competitive sealed proposals and sole source contracts, and for awarding technical, consultant, or personal services contracts, franchises, revocable consents, or concessions. Such written justification shall be filed with the comptroller of the city of New York along with the corresponding contract, franchise, revocable consent, or concession;

(viii) maintaining a file for every contract franchise, revocable consent, and concession containing information pertaining to the solicitation, award and management of every such contract or agreement. Such file shall contain copies of each determination, writing or filing required by this subdivision and shall be open to public inspection with adequate protection for information which is confidential;

(ix) a process for the filing of all contracts, franchises, revocable consents, and concessions with the comptroller of the city of New York;

(x) a process for emergency procurement in the case of an unforeseen danger to life, safety, property or a necessary service provided that such procurement shall be made with such competition as is practicable under the circumstances and that a written determination of the basis for the emergency procurement shall be required and filed with the comptroller of the city of New York when such emergency contract is filed with such comptroller; and

(xi) procedures for the fair and equitable resolution of contract disputes.

(b) Consistent with the provisions of paragraph (a) of this subdivision such policy shall also include: (i) standards for quality, function, and utility of all material goods, supplies, and services purchased by the chancellor, superintendents, or schools; (ii) regulations which enable superintendents and schools to purchase material goods, supplies, and services directly from vendors or suppliers when such products are available at prices or other terms more economically beneficial for the purposes of the acquiring superintendent or school; and (iii) regulations shall include repair services and building supplies, as defined in such regulations, for expenditures from each district's minor repair and purchasing funds pursuant to section twenty-five hundred ninety-r of this article.

(c) The chancellor shall be responsible for certifying that the procedural requisites pursuant to this subdivision and section twenty-five hundred ninety-g of this article have been met, prior to the filing any contract awarded by a procurement method other than competitive sealed bidding, or prior to filing any technical, consultant, or personal services contract, franchise, revocable consent, or concession with the comptroller of the city of New York. The corporation counsel for the city of New York shall certify prior to the filing of such contract or agreement with the comptroller of the city of New York, that the city district has legal authority to award each such contract or agreement.

(d) (i) No contract, franchise, revocable consent or concession shall be implemented until a copy has been filed with the comptroller of the city of New York and either such comptroller has registered it or thirty days have elapsed from the date of filing, whichever is sooner, unless an objection has been filed pursuant to subparagraph (iii) of this paragraph, or the comptroller of the city of New York has grounds for not registering such contract or agreement under subparagraph (ii) of this paragraph.

(ii) Subject to the provisions of subparagraph (iii) of this paragraph, the comptroller of the city of New York shall register such contract or agreement within thirty days unless such comptroller has information indicating that:

(1) there remains no unexpended and unapplied balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract or agreement;

(2) a certification required pursuant to this paragraph has not been made; or

(3) the proposed vendor has been debarred by the city of New York.

(iii) The comptroller of the city of New York may, within thirty days of the date of filing of the contract, franchise, revocable consent or concession with his or her office, object in writing to the registration of such contract or agreement, if in such comptroller's judgment there is sufficient reason to believe that there is possible corruption in the letting of such contract or agreement or that the proposed contractor is involved in corrupt activity. Such objection shall be delivered within such thirty day period to the mayor of the city of New York setting forth in detail the grounds for the New York city comptroller's determination. The mayor of the city of New York may require registration of the contract or agreement despite the New York city comptroller's objections if the mayor of the city of New York has responded to such comptroller's objections in writing, indicating:

(1) the corrective actions if any, that have been taken or will be taken in response to such comptroller's objections, or

(2) the reasons why the mayor of the city of New York disagrees with such comptroller's objections.

Such response by the mayor of the city of New York shall not serve as the basis for further objection by the New York city comptroller, and such comptroller shall register the contract, franchise, revocable consent or concession within ten days of receipt of the mayor of the city of New York's response.

(e) The requirements of paragraphs (c) and (d) of this subdivision shall not apply to an emergency contract awarded pursuant to subparagraph (x) of paragraph (a) of this subdivision, provided that the chancellor shall comply with the requirements of paragraphs (c) and (d) of this subdivision as soon as practicable.] (A) ENSURE THAT ALL CONTRACTS OR AGREEMENTS INVOLVING THE PURCHASE OR DELIVERY OF MATERIAL GOODS, SUPPLIES AND SERVICES BY OR TO THE CHANCELLOR, THE SUPERINTENDENTS OR THE SCHOOLS, INCLUDING ANY FRANCHISE OR CONCESSION AGREEMENTS, REGARDLESS OF THE SOURCE OF FUNDS, ARE ENTERED INTO IN ACCORDANCE WITH THE PROVISIONS OF CHAPTERS THIRTEEN AND FOURTEEN OF THE NEW YORK CITY CHARTER AND THE RULES OF THE NEW YORK CITY PROCUREMENT POLICY BOARD AND OF THE NEW YORK CITY FRANCHISE CONCESSION AND REVIEW COMMITTEE, PROVIDED THAT WHERE SUCH LAW OR RULES REQUIRE ACTION BY OR APPEAL TO THE MAYOR OR AN APPOINTEE OF THE MAYOR, OTHER THAN THE CHANCELLOR, SUCH ACTION SHALL INSTEAD BE TAKEN BY THE CHANCELLOR OR SUCH APPOINTEE OF THE CHANCELLOR AS THE CHANCELLOR MAY DELEGATE IN WRITING, AND PROVIDED FURTHER, ANY

CONTRACT AWARDED WITHOUT COMPETITION OR IN EXCESS OF ONE MILLION DOLLARS SHALL BE SUBJECT TO THE VOTE OF THE FULL BOARD OF EDUCATION UNLESS SUCH CONTRACT SHALL BE DEEMED AN EMERGENCY AS DEFINED IN SECTION THREE HUNDRED FIFTEEN OF THE NEW YORK CITY CHARTER OR SHALL BE MADE IN ACCORDANCE WITH RULES OF THE PROCUREMENT POLICY BOARD ESTABLISHED PURSUANT TO SECTION THREE HUNDRED FOURTEEN OF THE NEW YORK CITY CHARTER. NO SUCH CONTRACT OR AGREEMENT SHALL BE IMPLEMENTED UNTIL IT HAS BEEN FILED AND REGISTERED BY THE COMPTROLLER PURSUANT TO CHAPTERS FIVE AND THIRTEEN OF THE NEW YORK CITY CHARTER. FOR THE PURPOSES OF THIS SUBDIVISION, THE TERMS "CONTRACT" OR "AGREEMENT" SHALL INCLUDE ANY CONTRACT THAT DIRECTLY OR INDIRECTLY BENEFITS THE CITY DISTRICT, INCLUDING ANY CONTRACT OR OTHER INSTRUMENT IN WHICH THE CITY, CITY BOARD OR ANY OF ITS OFFICERS AGREES TO GIVE OR RECEIVE A CONSIDERATION OTHER THAN THE PAYMENT OF MONEY;

(B) ESTABLISH STANDARDS FOR QUALITY, FUNCTION, AND UTILITY OF ALL MATERIAL GOODS, SUPPLIES, AND SERVICES PURCHASED BY THE CHANCELLOR, SUPERINTENDENTS, OR SCHOOLS; AND

(C) PROMULGATE REGULATIONS WHICH ENABLE SUPERINTENDENTS AND SCHOOLS TO PURCHASE MATERIAL GOODS, SUPPLIES, AND SERVICES DIRECTLY FROM VENDORS OR SUPPLIERS WHEN SUCH PRODUCTS ARE AVAILABLE AT PRICES OR OTHER TERMS MORE ECONOMICALLY BENEFICIAL FOR THE PURPOSES OF THE ACQUIRING SUPERINTENDENT OR SCHOOL. SUCH REGULATIONS SHALL ALSO INCLUDE REPAIR SERVICES AND BUILDING SUPPLIES, AS DEFINED IN SUCH REGULATIONS, FOR EXPENDITURES FROM EACH DISTRICT'S MINOR REPAIR AND PURCHASING FUNDS PURSUANT TO SECTION TWENTY-FIVE HUNDRED NINETY-R OF THIS ARTICLE.

S 2. This act shall take effect immediately, provided that the amendments to subdivision 36 of section 2590-h of the education law made by section one of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith.