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

1330

2011-2012 Regular Sessions

I N S E N A T E

January 6, 2011

Introduced by Sens. DILAN, DIAZ, HASSELL-THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, in relation to authorizing political subdivisions to award public contracts to participants of a minority and women owned business enterprise program at a cost premium not to exceed ten percent of the lowest bid as an available remedy to a demonstrated disparity

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

Section 1. Section 104-a of the general municipal law, as amended by chapter 468 of the laws of 1994, is amended to read as follows:

S 104-a. Purchasing [of products] for public use. 1. Notwithstanding the provisions of section one hundred three of this [chapter] ARTICLE, when purchasing products the officer, board or agency of any political subdivision or of any district therein charged with the awarding of public contracts may, wherever recycled products meet contract specifications and the price of such products is reasonably competitive, purchase such products. For the purpose of this [section] SUBDIVISION and until July first, nineteen hundred ninety-six, "recycled product" shall mean any product which has been manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and meets secondary material content requirements adopted by the office of general services [under subdivision one of section one hundred seventy-seven of the state finance law] for products available to the political subdivision or district under state contract or, if no such contract for such product is available, any product which meets the secondary material content requirements adopted by the political subdivision or district thereof with respect to a specific commodity procurement by such entity. On and after July first, nineteen hundred ninety-six, "recycled product" shall mean, for

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

LBD02925-01-1

the purposes of this [section] SUBDIVISION, any product which is manufactured from secondary materials, as defined in subdivision one of section two hundred sixty-one of the economic development law, and which meets the requirements of subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto. For the purpose of this [section] SUBDIVISION, "reasonably competitive" shall mean that the cost of the recycled product does not exceed a cost premium of ten percent above the cost of a comparable product that is not a recycled product or, if at least fifty percent of the secondary materials utilized in the manufacture of that product are generated from the waste stream in New York state, the cost of the recycled product does not exceed a cost premium of fifteen percent above the cost of a comparable product that is not a recycled product.

Whenever such officer, board or agency shall purchase or cause the purchase of printing on recycled paper pursuant to this section, he or she shall require the printed material to contain the official state recycling emblem established pursuant to subdivision two of section 27-0717 of the environmental conservation law and regulations promulgated pursuant thereto if such paper has been approved by the department of environmental conservation as satisfying the requirements of such statute and regulations, or, if such paper has not been so approved, require the printed material to include a printed statement which indicates the percentages of pre-consumer and post-consumer recycled material content of such paper.

2. NOTWITHSTANDING THE PROVISIONS OF SECTION ONE HUNDRED THREE OF THIS ARTICLE, WHEN PURCHASING GOODS, SERVICES OR CONSTRUCTION FOR PUBLIC USE, THE OFFICER, BOARD OR AGENCY OF ANY POLITICAL SUBDIVISION OR OF ANY DISTRICT THEREIN CHARGED WITH THE AWARDING OF PUBLIC CONTRACTS THAT EMPLOY A MINORITY OR WOMEN OWNED BUSINESS ENTERPRISE (MWBE) PROGRAM, MAY AWARD ANY CONTRACT VALUED AT NO MORE THAN ONE MILLION DOLLARS TO A PARTICIPANT OF SUCH PROGRAM EVEN IF SUCH PARTICIPANT IS NOT THE LOWEST BIDDER FOR SUCH CONTRACT, PROVIDED, HOWEVER THAT SUCH AWARD MAY ONLY BE MADE TO THE LOWEST MWBE BID THAT IS REASONABLY COMPETITIVE. FOR THE PURPOSE OF THIS SUBDIVISION, AN "MWBE PROGRAM" SHALL BE DEFINED AS A PROGRAM DESIGNED TO INCREASE PARTICIPATION OF MWBES IN PUBLIC CONTRACTING THAT IS BASED ON A STUDY IN WHICH IT WAS FOUND THAT THERE IS OR HAS BEEN A DISPARITY BETWEEN THE AVAILABILITY AND THE UTILIZATION OF MWBES IN THE AWARD OF CONTRACTS BY SUCH POLITICAL SUBDIVISION OR DISTRICT THEREIN. FOR THE PURPOSE OF THIS SUBDIVISION, "REASONABLY COMPETITIVE" SHALL MEAN THAT THE MWBE BID DOES NOT EXCEED THE LOWEST BID BY MORE THAN TEN PERCENT.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.