

6033

2011-2012 Regular Sessions

I N A S S E M B L Y

March 4, 2011

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 chan-
cellor of the city school district of the city of New York

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

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

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

12 (a) Such policy shall specifically include:

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

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

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

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1 (iii) measures to enhance the ability of minority and women owned
2 business enterprises to compete for contracts and to ensure their mean-
3 ingful participation in the procurement process;
4 (iv) the manner for administering contracts and overseeing the
5 performance of contracts and contractors;
6 (v) standards and procedures to be used in determining whether bidders
7 are responsible;
8 (vi) circumstances under which procurement may be used for the
9 provision of technical, consultant or personal services;
10 (vii) requiring written justification for the basis, including the
11 efficiency, benefit, and necessity, for awarding a contract using
12 procurement methods other than competitive sealed bidding including
13 competitive sealed proposals and sole source contracts, and for awarding
14 technical, consultant, or personal services contracts, franchises, revo-
15 cable consents, or concessions. Such written justification shall be
16 filed with the comptroller of the city of New York along with the corre-
17 sponding contract, franchise, revocable consent, or concession;
18 (viii) maintaining a file for every contract franchise, revocable
19 consent, and concession containing information pertaining to the solici-
20 tation, award and management of every such contract or agreement. Such
21 file shall contain copies of each determination, writing or filing
22 required by this subdivision and shall be open to public inspection with
23 adequate protection for information which is confidential;
24 (ix) a process for the filing of all contracts, franchises, revocable
25 consents, and concessions with the comptroller of the city of New York;
26 (x) a process for emergency procurement in the case of an unforeseen
27 danger to life, safety, property or a necessary service provided that
28 such procurement shall be made with such competition as is practicable
29 under the circumstances and that a written determination of the basis
30 for the emergency procurement shall be required and filed with the comp-
31 troller of the city of New York when such emergency contract is filed
32 with such comptroller; and
33 (xi) procedures for the fair and equitable resolution of contract
34 disputes.

35 (b) Consistent with the provisions of paragraph (a) of this subdivi-
36 sion such policy shall also include: (i) standards for quality, func-
37 tion, and utility of all material goods, supplies, and services
38 purchased by the chancellor, superintendents, or schools; (ii) regu-
39 lations which enable superintendents and schools to purchase material
40 goods, supplies, and services directly from vendors or suppliers when
41 such products are available at prices or other terms more economically
42 beneficial for the purposes of the acquiring superintendent or school;
43 and (iii) regulations shall include repair services and building
44 supplies, as defined in such regulations, for expenditures from each
45 district's minor repair and purchasing funds pursuant to section twen-
46 ty-five hundred ninety-r of this article.

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

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

9 (ii) Subject to the provisions of subparagraph (iii) of this para-
10 graph, the comptroller of the city of New York shall register such
11 contract or agreement within thirty days unless such comptroller has
12 information indicating that:

13 (1) there remains no unexpended and unapplied balance of the appropri-
14 ation or fund applicable thereto, sufficient to pay the estimated
15 expense of executing such contract or agreement;

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

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

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

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

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

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

41 (e) The requirements of paragraphs (c) and (d) of this subdivision
42 shall not apply to an emergency contract awarded pursuant to subpara-
43 graph (x) of paragraph (a) of this subdivision, provided that the chan-
44 cellor shall comply with the requirements of paragraphs (c) and (d) of
45 this subdivision as soon as practicable.] (A) ENSURE THAT ALL CONTRACTS
46 OR AGREEMENTS INVOLVING THE PURCHASE OR DELIVERY OF MATERIAL GOODS,
47 SUPPLIES AND SERVICES BY OR TO THE CHANCELLOR, THE SUPERINTENDENTS OR
48 THE SCHOOLS, INCLUDING ANY FRANCHISE OR CONCESSION AGREEMENTS, REGARD-
49 LESS OF THE SOURCE OF FUNDS, ARE ENTERED INTO IN ACCORDANCE WITH THE
50 PROVISIONS OF CHAPTERS THIRTEEN AND FOURTEEN OF THE NEW YORK CITY CHAR-
51 TER AND THE RULES OF THE NEW YORK CITY PROCUREMENT POLICY BOARD AND OF
52 THE NEW YORK CITY FRANCHISE CONCESSION AND REVIEW COMMITTEE, PROVIDED
53 THAT WHERE SUCH LAW OR RULES REQUIRE ACTION BY OR APPEAL TO THE MAYOR OR
54 AN APPOINTEE OF THE MAYOR, OTHER THAN THE CHANCELLOR, SUCH ACTION SHALL
55 INSTEAD BE TAKEN BY THE CHANCELLOR OR SUCH APPOINTEE OF THE CHANCELLOR
56 AS THE CHANCELLOR MAY DELEGATE IN WRITING, AND PROVIDED FURTHER, ANY

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

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

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

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