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

5552

2013-2014 Regular Sessions

I N S E N A T E

May 17, 2013

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture

AN ACT to amend the agriculture and markets law and the state finance law, in relation to local product procurement; and in relation to a procurement training program for agricultural business

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

Section 1. Section 2 of the agriculture and markets law is amended by adding a new subdivision 6 to read as follows:

6. "LOCAL FOOD PRODUCTS" MEANS ANY FOOD PRODUCTS THAT ARE GROWN, PRODUCED, HARVESTED, AND/OR PROCESSED BY NEW YORK CITIZENS OR BUSINESSES LOCATED WITHIN THE BORDERS OF NEW YORK STATE, AND PREDOMINANTLY CONTAINS NEW YORK-GROWN INGREDIENTS.

S 2. Subdivision 4 of section 165 of the state finance law, as amended by chapter 137 of the laws of 2008, is amended to read as follows:

4. Special provisions for purchase of available New York food products.

a. Except as otherwise provided in this subdivision, when letting contracts for the purchase of food products on behalf of facilities and institutions of the state, solicitation specifications of the office of general services and any other agency, department, office, board or commission may require provisions that mandate that all or some of the required food products are [grown, produced or harvested in New York state, or that any processing of such food products take place in facilities located within New York state] LOCAL FOOD PRODUCTS, AS SUCH TERM IS DEFINED IN SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW.

b. The commissioner of agriculture and markets shall determine, using uniform criteria, those LOCAL food products, AS SUCH TERM IS DEFINED IN SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW, for which the requirements of this subdivision are deemed beneficial and

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

LBD11055-02-3

shall promulgate and forward to the appropriate agencies a list of such LOCAL food products, and shall in addition ascertain those periods of time each year that those LOCAL food products are available in sufficient quantities for competitive purchasing and shall forward such information to purchasing agencies. The commissioner of agriculture and markets shall update such list as often as is deemed by him or her to be necessary.

c. (i) Prior to issuing a solicitation for such food products, purchasing agencies shall advise the commissioner of agriculture and markets of the quantities of each food product on the list promulgated by the commissioner of agriculture and markets to fulfill that agency's purchasing needs.

(ii) The commissioner of agriculture and markets will then make a determination of whether those products required by the purchasing agency are available in sufficient quantities to satisfy the purchasing agency's requirements.

(iii) Upon a determination by the commissioner of agriculture and markets that the food products required by the purchasing agency are available in sufficient quantities to fulfill the agency's purchasing needs, the purchasing agency may include in its solicitation a requirement that all or some of those food products are [grown, produced or harvested in New York state, or that any processing of such food products take place in facilities located within New York state] LOCAL FOOD PRODUCTS, AS SUCH TERM IS DEFINED IN SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW. THE PURCHASING AGENCY MAY THEN GIVE PREFERENCE TO PROCURING LOCAL FOOD PRODUCTS, IF THE PRODUCTS COST NO MORE THAN TEN PERCENT MORE THAN FOOD PRODUCTS THAT ARE NOT GROWN, PRODUCED, HARVESTED, AND/OR PROCESSED WITHIN THIS STATE.

(iv) Upon a determination by the commissioner of agriculture and markets that such food products are not available in sufficient quantities to fulfill the agency's purchasing needs, the purchasing agency shall issue a solicitation that does not require that all or some of those food products are [grown, produced or harvested in New York state, or that any processing of such food products take place in facilities located within New York state] LOCAL FOOD PRODUCTS, AS SUCH TERM IS DEFINED IN SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW. In such cases, the purchasing agency may include such requirements in the next contract for such food products that is let if at such time those food products are available in sufficient quantities. If at that time, those food products are not available in sufficient quantities, the requirement shall again be waived until such time as the products are available.

(v) In the event that the purchasing agency receives no offers that meet the agency's requirement that all or some of the food products are [grown, produced or harvested in New York state, or that any processing of such food products take place in facilities located within New York state] LOCAL FOOD PRODUCTS, AS SUCH TERM IS DEFINED IN SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW, it may waive the provisions of this subdivision and award a contract in accordance with other applicable statutes. In addition, if the commissioners of agriculture and markets, economic development and any such individual agency shall agree as to the deleterious economic impact of specifications requiring such purchases, such agencies may waive the provisions of this subdivision for such purchases.

d. The commissioner, and the commissioner of agriculture and markets, may issue such regulations as they deem necessary and proper for the implementation of this subdivision.

e. Notwithstanding any other section of law, rule, regulation or statute, the department of agriculture and markets shall supply information required by paragraph b of this subdivision to the office of general services and to all other appropriate agencies.

f. (i) With each offer, the offerer shall certify that the food products provided pursuant to that solicitation will be in conformity with the provisions of the percentage required to meet or exceed the requirements in the solicitation specifying that all or some of the food products be [grown, produced, or harvested within New York state or that any processing of such food products take place in facilities located within New York state] LOCAL FOOD PRODUCTS, AS SUCH TERM IS DEFINED IN SUBDIVISION SIX OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW.

(ii) Any successful offerer who fails to comply with the provisions of this subdivision, at the discretion of such agency, board, office or commission, shall forfeit the right to bid on contracts let under the provisions of this subdivision for a period of time to be determined by the commissioner and the commissioner of agriculture and markets.

g. The commissioner and the commissioner of agriculture and markets, shall advise and assist the chancellor of the state university of New York in extending the benefits of the provisions of this subdivision to the university and shall modify any regulations or procedures heretofore established pursuant to this subdivision, in order to facilitate such participation.

S 3. Subparagraphs (vii), (viii), (ix), (x) and (xi) of paragraph (b) of subdivision 3 of section 163 of the state finance law, subparagraph (vii) as added by chapter 584 of the laws of 2005, and subparagraphs (viii), (ix), (x) and (xi) as added by chapter 137 of the laws of 2008, are amended to read as follows:

(vii) WITH THE ASSISTANCE OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPARTMENT OF AGRICULTURE AND MARKETS, PROVIDE A TRAINING PROGRAM ONCE PER YEAR, IN EACH ECONOMIC DEVELOPMENT REGION, AS ESTABLISHED IN ARTICLE ELEVEN OF THE ECONOMIC DEVELOPMENT LAW, BEGINNING JANUARY FIRST, TWO THOUSAND FOURTEEN, FOR AGRICULTURAL BUSINESSES. SUCH TRAINING PROGRAM SHALL PROVIDE ASSISTANCE WITH RESPECT TO PARTICIPATION AS A VENDOR IN THE PROCUREMENT PROCESS, AS ESTABLISHED IN THIS ARTICLE, AND THE DEVELOPMENT OF LOCAL FOOD PRODUCTS WHICH ARE NOT GROWN, PRODUCED, HARVESTED, AND/OR PROCESSED IN SUFFICIENT QUANTITIES TO FULFILL STATE AGENCIES' NEEDS.

(VIII) maintain a list of contractors which produce or manufacture or offer for sale environmentally-sensitive cleaning and maintenance products in the form, function and utility generally used by elementary and secondary schools in accordance with specifications or guidelines promulgated pursuant to section four hundred nine-i of the education law.

[(viii)] (IX) review and consider prior to issuance of bid solicitations the term of the proposed contract based on factors, including, but not limited to; (A) the nature of the commodity, (B) the complexity of the procurement, (C) the identity and type of purchasers, (D) the suitability of the contract for adding additional contractors during the term, and (E) the estimated contract value. This determination shall be documented in the procurement record.

[(ix)] (X) reasonably consider aggregate amount of public sales by potential vendors.

[(x)] (XI) review and consider the feasibility of creating regional contracts for commodities being procured by the state.

[(xi)] (XII) maintain a procurement record for each centralized contract procurement identifying, with supporting documentation, decisions made by the commissioner during the procurement process. The procurement record shall include, but not be limited to, each contract amendment, and the justification for each.

S 4. This act shall take effect immediately; provided however that the amendments made to subparagraphs (vii), (viii), (ix), (x) and (xi) of paragraph (b) of subdivision 3 of section 163 of the state finance law by section three of this act shall not affect the repeal of such section and shall be deemed repealed therewith.