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

6055

2015-2016 Regular Sessions

I N S E N A T E

September 25, 2015

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

AN ACT to amend the general municipal law, in relation to requiring municipalities to participate in a system to compile vendor responsibility information

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

Section 1. The general municipal law is amended by adding a new section 103-h to read as follows:

S 103-H. VENDOR RESPONSIBILITY; ONLINE PARTICIPATION. 1. EVERY MUNICIPAL CORPORATION SHALL PARTICIPATE IN AN ONLINE VENDOR SYSTEM. THE GOVERNING BODY OF A MUNICIPALITY SHALL ELECT TO EITHER (A) PARTICIPATE IN THE ONLINE VENDOR RESPONSIBILITY SYSTEM ESTABLISHED BY THE STATE COMPTROLLER PURSUANT TO THIS SECTION; OR (B) ESTABLISH AN ONLINE VENDOR RESPONSIBILITY SYSTEM FOR THE MUNICIPALITY, WHICH CONFORMS TO THE REQUIREMENTS OF THIS SECTION AND IS APPROVED BY THE STATE COMPTROLLER.

2. DEFINITIONS. AS USED IN THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "ENROLLMENT" SHALL MEAN THE ESTABLISHMENT OF AN ONLINE SERVICES ACCOUNT WITH THE STATE COMPTROLLER OR A MUNICIPALITY, INCLUDING, BUT NOT LIMITED TO, THE CREATION OF A UNIQUE USER IDENTIFICATION AND PASSWORD. ENROLLMENT PROVIDES A USER ACCESS TO THE SYSTEM.

(B) "MUNICIPAL SYSTEM" SHALL MEAN THE ONLINE SOFTWARE, DATA AND RELATED RESOURCES ESTABLISHED AND MAINTAINED BY A MUNICIPALITY PURSUANT TO PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION TO COMPILE VENDOR RESPONSIBILITY INFORMATION. EACH SUCH SYSTEM SHALL INCLUDE, BUT NOT BE LIMITED TO:

(1) THE NAMES, ADDRESSES AND FEDERAL TAXPAYER IDENTIFICATION NUMBERS OF VENDORS AND SUBCONTRACTORS, WHERE AVAILABLE IN ACCORDANCE WITH APPLICABLE LAW;

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

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(2) THE DOLLAR AMOUNT OF EACH CONTRACT, INCLUDING THE MAXIMUM AND REVISED MAXIMUM EXPENDITURE AUTHORIZED, THE CURRENT ENCUMBRANCE AND THE ACTUAL EXPENDITURES;

(3) THE TYPES OF GOODS AND SERVICES TO BE PROVIDED PURSUANT TO THE CONTRACT;

(4) THE TERM OF THE CONTRACT, OR, IN THE CASE OF A CONSTRUCTION CONTRACT, THE STARTING AND SCHEDULED COMPLETION DATE OF THE CONTRACT, AND THE DATE FINAL PAYMENT IS AUTHORIZED;

(5) THE MUNICIPALITY THAT AWARDED THE CONTRACT, AND ANY CONTRACT REFERENCE NUMBER ASSIGNED BY THE MUNICIPALITY OR THE STATE COMPTROLLER;

(6) THE MANNER IN WHICH ANY VENDOR OR SUBCONTRACTOR WAS SELECTED INCLUDING, BUT NOT LIMITED TO, IN THE CASE OF A VENDOR, WHETHER THE VENDOR WAS SELECTED THROUGH PUBLIC BIDDING AND, IF SO, WHETHER THE VENDOR WAS THE LOWEST RESPONSIBLE BIDDER; WHETHER THE VENDOR WAS SELECTED THROUGH A REQUEST FOR PROPOSAL PROCEDURE AND, IF SO, WHETHER THE VENDOR'S RESPONSE TO THE REQUEST OFFERED THE LOWEST PRICE OPTION; WHETHER THE VENDOR WAS SELECTED WITHOUT COMPETITION OR AS A SOLE SOURCE; WHETHER THE VENDOR WAS SELECTED THROUGH AN EMERGENCY PROCEDURE ESTABLISHED PURSUANT TO THIS CHAPTER, WHERE APPLICABLE; OR WHETHER THE VENDOR WAS SELECTED FROM A LIST OF PREQUALIFIED BIDDERS, AND, IF APPLICABLE, WHETHER THE VENDOR WAS THE LOWEST RESPONSIBLE BIDDER; AND

(7) THE DATE OR DATES OF ANY PUBLIC HEARING OR HEARINGS HELD WITH RESPECT TO A CONTRACT AND THE AGENDA NUMBER OF ANY ACTION TAKEN THEREON.

(C) "ONLINE SERVICES" SHALL MEAN THE SERVICES PROVIDED ELECTRONICALLY AND SECURELY BY THE STATE COMPTROLLER FOR THE BENEFIT OF CUSTOMERS, CLIENTS AND BUSINESS PARTNERS OF THE STATE'S MUNICIPALITIES; OR SERVICES PROVIDED ELECTRONICALLY AND SECURELY BY A MUNICIPALITY FOR THE BENEFIT OF ITS CUSTOMERS, CLIENTS AND BUSINESS PARTNERS. SUCH ONLINE SERVICES MAY BE EXPANDED AND ENHANCED AS TECHNOLOGY ALLOWS.

(D) "CONTRACT" SHALL MEAN AND INCLUDE ANY WRITTEN AGREEMENT FOR THE ACQUISITION OF GOODS, SERVICES OR CONSTRUCTION OF ANY KIND BETWEEN A VENDOR AND A MUNICIPALITY, OR A WRITTEN AGREEMENT OR OTHER INSTRUMENT WHEREIN A MUNICIPALITY AGREES TO GIVE CONSIDERATION OTHER THAN THE PAYMENT OF MONEY.

(E) "SUBCONTRACTOR" SHALL MEAN AN INDIVIDUAL, SOLE PROPRIETORSHIP, PARTNERSHIP, JOINT VENTURE OR CORPORATION, WHICH IS ENGAGED IN A SUBCONTRACT OR SUBCONTRACTS BY A VENDOR OR VENDORS PURSUANT TO A CONTRACT OR CONTRACTS AND SUCH SUBCONTRACT IS VALUED AT TEN THOUSAND DOLLARS OR MORE, OR THE AGGREGATE VALUE OF ALL SUCH SUBCONTRACTS DURING A TWELVE MONTH PERIOD OF TIME IS TEN THOUSAND DOLLARS OR MORE AND IS KNOWN AT THE TIME OF THE AWARD OF THE CONTRACTS TO THE VENDOR OR VENDORS.

(F) "SYSTEM" SHALL MEAN THE ONLINE SOFTWARE, DATA AND RELATED RESOURCES MAINTAINED BY THE COMPTROLLER OR A MUNICIPALITY TO COMPILE VENDOR RESPONSIBILITY INFORMATION.

(G) "TERMS OF SERVICE" SHALL MEAN THE TERMS AND CONDITIONS DEVELOPED BY THE STATE COMPTROLLER OR A MUNICIPALITY AND AGREED TO BY EACH AUTHORIZED USER PRIOR TO GAINING ACCESS TO ONLINE SERVICES. TERMS OF SERVICE SHALL INCLUDE A DESCRIPTION OF THE SERVICES, OBLIGATIONS OF THE STATE COMPTROLLER OR THE MUNICIPALITY AND THE AUTHORIZED USER, A DESCRIPTION OF THE STATE COMPTROLLER'S OR THE MUNICIPALITY'S PRIVACY POLICY, AUTHORIZED USER CODE OF CONDUCT, AND INDEMNITY FOR THE STATE COMPTROLLER, THE STATE, THE POLITICAL SUBDIVISIONS THEREOF OR THE MUNICIPALITY. TERMS OF SERVICE ARE SUBJECT TO CHANGE AS PRESCRIBED BY THE STATE COMPTROLLER OR THE MUNICIPALITY. AUTHORIZED USERS MAY VIEW CHANGES VIA THE STATE COMPTROLLER'S OR THE MUNICIPALITY'S INTERNET SITE.

(H) "VENDOR" SHALL INCLUDE ANY PERSON, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY OR ANY BUSINESS ENTITY BIDDING ON A MUNICIPAL PROCUREMENT OR OTHERWISE AWARDED A CONTRACT HAVING A VALUE OF TEN THOUSAND DOLLARS OR MORE; OR ANY PERSON, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY OR ANY BUSINESS ENTITY PERFORMING CONTRACTS FOR MUNICIPALITIES WHICH HAVE AN AGGREGATE VALUE OF ONE HUNDRED THOUSAND DOLLARS OR MORE DURING ANY PERIOD OF TWELVE MONTHS.

(I) "VENDOR RESPONSIBILITY" SHALL MEAN THAT A VENDOR HAS THE CAPACITY TO FULLY PERFORM THE TERMS OF A CONTRACT AND THE INTEGRITY AND BUSINESS ETHICS TO JUSTIFY AN AWARD OF PUBLIC DOLLARS. A DETERMINATION OF VENDOR RESPONSIBILITY SHALL INCLUDE CONSIDERATION OF FACTORS INCLUDING, BUT NOT LIMITED TO:

(1) THE CURRENT ADDRESSES AND TELEPHONE NUMBERS OF THE VENDOR'S PRINCIPAL EXECUTIVE OFFICES AND THE VENDOR'S PRIMARY PLACE OF BUSINESS IN THE STATE, IF DIFFERENT; THE ADDRESSES OF THE THREE LARGEST SITES AT WHICH IT IS ANTICIPATED THAT WORK WOULD OCCUR IN CONNECTION WITH THE PROPOSED CONTRACT, BASED ON THE NUMBER OF PERSONS TO BE EMPLOYED AT EACH SITE; ANY OTHER NAMES UNDER WHICH THE VENDOR HAS CONDUCTED BUSINESS WITHIN THE PRIOR FIVE YEARS; AND THE ADDRESSES AND TELEPHONE NUMBERS OF ALL PRINCIPAL PLACES OF BUSINESS AND PRIMARY PLACES OF BUSINESS IN THE STATE, IF DIFFERENT, WHERE THE VENDOR HAS CONDUCTED BUSINESS WITHIN THE PRIOR FIVE YEARS;

(2) THE DUN & BRADSTREET NUMBER OF THE VENDOR, IF ANY;

(3) THE TAXPAYER IDENTIFICATION NUMBERS, EMPLOYER IDENTIFICATION NUMBERS OR SOCIAL SECURITY NUMBERS OF THE VENDOR OR THE DIVISION OR BRANCH OF THE VENDOR WHICH IS ACTUALLY ENTERING INTO THE CONTRACT;

(4) THE TYPE OF BUSINESS ENTITY OF THE VENDOR;

(5) THE DATE SUCH BUSINESS ENTITY WAS FORMED, THE STATE, COUNTY AND COUNTRY, IF NOT WITHIN THE UNITED STATES, IN WHICH IT WAS FORMED AND THE OTHER COUNTIES WITHIN THE STATE IN WHICH A CERTIFICATE OF INCORPORATION, CERTIFICATE OF DOING BUSINESS, OR THE EQUIVALENT HAS BEEN FILED WITHIN THE PRIOR FIVE YEARS;

(6) THE PRINCIPAL OWNERS AND OFFICERS OF THE VENDOR, THEIR DATES OF BIRTH, TAXPAYER IDENTIFICATION NUMBERS, SOCIAL SECURITY NUMBERS AND THEIR CURRENT BUSINESS ADDRESSES AND TELEPHONE NUMBERS;

(7) THE NAMES, CURRENT BUSINESS ADDRESSES AND TELEPHONE NUMBERS, TAXPAYER IDENTIFICATION NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS OF AFFILIATES OF THE VENDOR;

(8) THE PRINCIPAL OWNERS AND OFFICERS OF AFFILIATES OF THE VENDOR AND THEIR CURRENT BUSINESS ADDRESSES AND TELEPHONE NUMBERS;

(9) THE PRINCIPAL OWNERS AND OFFICERS OF EVERY SUBCONTRACTOR;

(10) THE TYPE, AMOUNT AND CONTRACT REGISTRATION NUMBER OF ALL OTHER MUNICIPAL AND STATE AGENCY CONTRACTS AWARDED TO THE VENDOR;

(11) THE CONTRACT SANCTION HISTORY OF THE VENDOR FOR THE PRIOR FIVE YEARS INCLUDING, BUT NOT LIMITED TO, ALL CAUTIONS, SUSPENSIONS, DEBARMENTS AND CANCELLATIONS OF A CONTRACT BASED UPON THE VENDOR'S BUSINESS CONDUCT, DECLARATIONS OF DEFAULT ON ANY CONTRACT MADE BY ANY GOVERNMENTAL ENTITY, DETERMINATIONS OF INELIGIBILITY TO BID OR PROPOSE ON CONTRACTS, AND WHETHER ANY PROCEEDINGS TO DETERMINE ELIGIBILITY TO BID OR PROPOSE ON CONTRACTS ARE PENDING;

(12) THE CONTRACT SANCTION HISTORY FOR THE PRIOR FIVE YEARS OF AFFILIATES OF THE VENDOR INCLUDING, BUT NOT LIMITED TO, ALL CAUTIONS, SUSPENSIONS, DEBARMENTS AND CANCELLATIONS OF A CONTRACT BASED UPON SUCH ENTITY'S BUSINESS CONDUCT, DECLARATIONS OF DEFAULT ON ANY CONTRACT MADE BY ANY GOVERNMENTAL ENTITY, DETERMINATIONS OF INELIGIBILITY TO BID OR

PROPOSE ON CONTRACTS, AND WHETHER ANY PROCEEDINGS TO DETERMINE ELIGIBILITY TO BID OR PROPOSE ON CONTRACTS ARE PENDING;

(13) THE NAME AND TELEPHONE NUMBER OF THE CHIEF CONTRACTING OFFICER OR OTHER EMPLOYEE OF THE MUNICIPALITY, ELECTED OFFICIAL OR THE COUNCIL RESPONSIBLE FOR SUPERVISION OF THOSE CHARGED WITH DAY-TO-DAY MANAGEMENT OF THE CONTRACT;

(14) JUDGMENTS OR INJUNCTIONS OBTAINED WITHIN THE PRIOR FIVE YEARS IN ANY JUDICIAL ACTIONS OR PROCEEDINGS INITIATED BY ANY MUNICIPALITY, ANY ELECTED OFFICIAL OR THE COUNCIL AGAINST THE CONTRACTOR WITH RESPECT TO A CONTRACT, AND ANY SUCH JUDICIAL ACTIONS OR PROCEEDINGS THAT ARE PENDING;

(15) RECORD OF ALL SANCTIONS IMPOSED WITHIN THE PRIOR FIVE YEARS AS A RESULT OF JUDICIAL OR ADMINISTRATIVE DISCIPLINARY PROCEEDINGS WITH RESPECT TO ANY PROFESSIONAL LICENSES HELD BY THE VENDOR, OR A PRINCIPAL OWNER OR OFFICER OF THE VENDOR;

(16) WHETHER STATE TAX RETURNS, WHERE REQUIRED, HAVE BEEN FILED FOR THE PAST FIVE YEARS;

(17) OUTSTANDING TAX WARRANTS AND UNSATISFIED TAX LIENS;

(18) INFORMATION FROM PUBLIC REPORTS OF THE NEW YORK STATE ORGANIZED CRIME TASK FORCE WHICH INDICATES INVOLVEMENT IN CRIMINAL ACTIVITY;

(19) CRIMINAL PROCEEDINGS PENDING AGAINST THE VENDOR, AND ANY PRINCIPAL OWNER OR OFFICER OF SUCH VENDOR;

(20) RECORD OF ALL CRIMINAL CONVICTIONS OF THE VENDOR, ANY CURRENT PRINCIPAL OWNER OR OFFICER FOR ANY CRIME RELATED TO TRUTHFULNESS OR BUSINESS CONDUCT AND FOR ANY OTHER FELONY COMMITTED WITHIN THE PRIOR TEN YEARS, AND OF ANY FORMER PRINCIPAL OWNER OR OFFICER, WITHIN THE PRIOR TEN YEARS, FOR ANY CRIME RELATED TO TRUTHFULNESS OR BUSINESS CONDUCT AND FOR ANY OTHER FELONY COMMITTED WHILE HE OR SHE HELD SUCH POSITION OR STATUS;

(21) ALL PENDING BANKRUPTCY PROCEEDINGS AND ALL BANKRUPTCY PROCEEDINGS INITIATED WITHIN THE PAST SEVEN YEARS BY OR AGAINST THE VENDOR AND ITS AFFILIATES;

(22) WHETHER THE VENDOR HAS CERTIFIED THAT IT WAS NOT FOUNDED OR ESTABLISHED OR IS NOT OPERATED IN A MANNER TO EVADE THE APPLICATION OR DEFEAT THE PURPOSE OF THIS SECTION AND IS NOT THE SUCCESSOR, ASSIGNEE OR AFFILIATE OF AN ENTITY WHICH IS INELIGIBLE TO BID OR PROPOSE ON CONTRACTS OR AGAINST WHICH A PROCEEDING TO DETERMINE ELIGIBILITY TO BID OR PROPOSE ON CONTRACTS IS PENDING; AND

(23) THE NAME AND MAIN BUSINESS ADDRESS OF ANYONE WHO THE VENDOR RETAINED, EMPLOYED OR DESIGNATED TO INFLUENCE THE PREPARATION OF CONTRACT SPECIFICATIONS OR THE SOLICITATION OR AWARD OF THE CONTRACT.

3. SUBJECT TO THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, MUNICIPALITIES MAY ENROLL WITH THE STATE COMPTROLLER TO ACCESS THE SYSTEM MAINTAINED BY THE COMPTROLLER TO COMPILE VENDOR RESPONSIBILITY INFORMATION. SUCH MUNICIPALITIES SHALL AGREE TO AND ABIDE BY THE TERMS OF SERVICE FOR SUCH SYSTEM AS THE STATE COMPTROLLER DEEMS NECESSARY.

4. (A) FOR EACH CONTRACT OR SUBCONTRACT BETWEEN A VENDOR AND A SUBCONTRACTOR WHERE, PURSUANT TO LAW OR BY DIRECTION OF A MUNICIPALITY, DISCLOSURE FOR VENDOR RESPONSIBILITY IS REQUIRED, THE MUNICIPALITY SHALL:

(1) PROVIDE NOTICE TO VENDORS BIDDING FOR PROCUREMENTS ADMINISTERED BY THE MUNICIPALITY THAT ANY VENDOR AND SUBCONTRACTOR, SUBMITTING A VENDOR RESPONSIBILITY QUESTIONNAIRE SHALL DO SO VIA THE SYSTEM MAINTAINED TO COMPILE VENDOR RESPONSIBILITY INFORMATION;

(2) PROVIDE VENDORS WITH INSTRUCTIONS ON HOW TO ELECTRONICALLY ACCESS THE SYSTEM AND PROVIDE CONTACT INFORMATION FOR ASSISTANCE WITH ENROLL-

MENT. THIS INFORMATION SHALL BE MADE AVAILABLE PRIOR TO THE TIME WHEN VENDORS ARE REQUIRED TO SUBMIT DISCLOSURE FOR VENDOR RESPONSIBILITY; AND

(3) ACCESS THE SYSTEM TO OBTAIN AND EVALUATE ANY DATA SUBMITTED BY A VENDOR PROPOSED FOR CONTRACT AWARD. MUNICIPALITIES SHALL ENSURE THE SUBMISSION FILED BY THE VENDOR MEETS SUCH SYSTEM'S TIMELINESS STANDARDS.

(B) FOR CONTRACTS WHERE VENDOR DISCLOSURE IS NOT OTHERWISE REQUIRED, A MUNICIPALITY AT ITS DISCRETION, MAY REQUIRE VENDORS BIDDING ON PROCUREMENTS, AND/OR SUBCONTRACTORS, TO SUBMIT A VENDOR RESPONSIBILITY QUESTIONNAIRE VIA THE SYSTEM.

(C) A MUNICIPALITY SHALL PROVIDE ACCESS TO THE SYSTEM TO USERS WITHIN THEIR ORGANIZATION, AS DEEMED APPROPRIATE BY THE CHIEF EXECUTIVE OFFICER OF THE MUNICIPALITY OR HIS OR HER DESIGNEE. MUNICIPAL USERS PROVIDED WITH SUCH ACCESS SHALL BE THOSE INDIVIDUALS, WHO, AS PART OF THEIR OFFICIAL JOB DUTIES, ARE REQUIRED TO ASSESS AND/OR REVIEW VENDOR RESPONSIBILITY FOR THE MUNICIPALITY'S CONTRACTS.

5. ANNUALLY, ON OR BEFORE JANUARY THIRTIETH, EACH MUNICIPALITY SHALL ISSUE A REPORT WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING INFORMATION FROM THE VENDOR RESPONSIBILITY SYSTEM IN WHICH IT PARTICIPATES FOR EACH CONTRACT DURING THE IMMEDIATELY PRECEDING MUNICIPAL FISCAL YEAR:

(A) THE TYPE AND DOLLAR AMOUNT OF EACH CONTRACT;

(B) THE IDENTIFICATION OR REFERENCE NUMBER OF EACH CONTRACT, IF ANY;

(C) THE NAMES OF THE VENDOR AND SUBCONTRACTORS OF THE CONTRACT; AND

(D) THE MANNER IN WHICH THE CONTRACTOR WAS SELECTED INCLUDING, BUT NOT LIMITED TO, WHETHER THE CONTRACTOR WAS THE LOWEST RESPONSIBLE BIDDER, WHETHER THE CONTRACTOR WAS SELECTED WITHOUT COMPETITION, WHETHER THE CONTRACTOR WAS SELECTED THROUGH AN EMERGENCY PROCEDURE, OR WHETHER THE CONTRACTOR WAS SELECTED THROUGH A REQUEST FOR PROPOSAL PROCEDURE.

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