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

8044--A

2015-2016 Regular Sessions

I N A S S E M B L Y

June 5, 2015

Introduced by M. of A. BICHOTTE -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, and the New York city charter, in relation to opportunities for minority and women-owned business enterprises and emerging business enterprises

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

Section 1. The opening paragraph of subdivision 1 of section 103 of the general municipal law, as amended by section 1 of chapter 2 of the laws of 2012, is amended to read as follows:

Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section, provided, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section one hundred sixty-three of the state finance law; PROVIDED, HOWEVER, A CITY WITH A POPULATION OF ONE MILLION INHABITANTS OR MORE MAY ALSO IDENTIFY A QUANTITATIVE FACTOR TO BE USED IN EVALUATION OF BIDS OR OFFERS FOR AWARDING CONTRACTS FOR BIDDERS OR OFFERERS THAT ARE MINORITY- OR WOMEN-OWNED BUSINESS ENTERPRISES CERTIFIED PURSUANT TO LOCAL LAW, to a responsive and responsible bidder or offerer in the manner provided by this section except that in a poli-

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

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tical subdivision other than a city with a population of one million inhabitants or more or any district, board or agency with jurisdiction exclusively therein the use of best value for awarding a purchase contract or purchase contracts must be authorized by local law or, in the case of a district corporation, school district or board of cooperative educational services, by rule, regulation or resolution adopted at a public meeting. PROVIDED, HOWEVER, THAT A CITY HAVING A POPULATION OF ONE MILLION INHABITANTS OR MORE IS AUTHORIZED TO AWARD PURCHASE CONTRACTS TO BUSINESSES CERTIFIED AS MINORITY- OR WOMEN-OWNED BUSINESS ENTERPRISES PURSUANT TO LOCAL LAW IN AN AMOUNT NOT TO EXCEED TWO HUNDRED THOUSAND DOLLARS WITHOUT A FORMAL COMPETITIVE PROCESS.

S 2. Section 103 of the general municipal law is amended by adding a new subdivision 17 to read as follows:

17. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A CITY WITH A POPULATION OF ONE MILLION INHABITANTS OR MORE MAY ESTABLISH A CAPACITY BUILDING PROGRAM TO INCREASE THE CAPACITY OF BUSINESSES CERTIFIED AS MINORITY- OR WOMEN-OWNED BUSINESS ENTERPRISES PURSUANT TO LOCAL LAW TO BID FOR AND PERFORM PUBLIC CONTRACTS, TO PROMOTE THE MEANINGFUL PARTICIPATION OF SUCH FIRMS ON SUCH CONTRACTS. SUCH PROGRAM MAY PROVIDE REASONABLE PROCEDURES TO SECURE THE MEANINGFUL PARTICIPATION OF SUCH FIRMS IN THE PERFORMANCE OF PUBLIC CONTRACTS.

S 3. Paragraph (a) of subdivision 15 of section 103 of the general municipal law, as added by section 1-a of part MM of chapter 57 of the laws of 2008, is amended to read as follows:

(a) Notwithstanding any general, special or local law or rule or regulation to the contrary, an officer, board or agency of any county, any school district or any political subdivision of the state with a population of fifty thousand or more charged with awarding a contract for public work, AND AN OFFICER, BOARD OR AGENCY IN A CITY WITH A POPULATION OF ONE MILLION INHABITANTS OR MORE CHARGED WITH AWARDING A PURCHASE CONTRACT, may establish guidelines governing the qualifications of bidders seeking to bid or enter into such contracts. If such officer, board or agency maintains an appropriate list of qualified bidders, the bidding shall be restricted to those who have qualified prior to the receipt of bids according to standards fixed by such officer, board or agency. In determining whether a prospective bidder qualifies for inclusion on a list of pre-qualified bidders, the officer, board or agency shall consider the experience and record of performance of the prospective bidder in the particular type of work, as well as: (i) the prospective bidder's ability to undertake the particular type and complexity of work; (ii) the financial capability, responsibility and reliability of the prospective bidder for such type and complexity of work; (iii) the record of the prospective bidder in complying with existing labor standards and maintaining harmonious labor relations; (iv) the prospective bidder's compliance with equal employment opportunity requirements and anti-discrimination laws, and demonstrated commitment to working with minority and women-owned businesses through joint ventures or subcontractor relationships; and (v) the record of the prospective bidder in protecting the health and safety of workers on public works projects and job sites as demonstrated by the prospective bidder's experience modification rate for each of the last three years.

S 4. The New York city charter is amended by adding a new section 314-a to read as follows:

S 314-A. SHELTERED MARKET. THE PROCUREMENT POLICY BOARD MAY PROVIDE BY RULE THAT AGENCIES MAY MAKE PROCUREMENTS OF GOODS, SERVICES, CONSTRUCTION, OR CONSTRUCTION-RELATED SERVICES FOR AMOUNTS NOT EXCEEDING

TWO HUNDRED THOUSAND DOLLARS FROM MINORITY- OR WOMEN-OWNED BUSINESS ENTERPRISES CERTIFIED PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF THIS CHAPTER WITHOUT A FORMAL COMPETITIVE PROCESS.

S 5. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 6. This act shall take effect immediately and shall apply to any contract let or awarded on or after such date; provided, however that the amendments to subdivision 1 of section 103 of the general municipal law made by section one of this act shall not affect the expiration and reversion of such subdivision as provided in subdivision (a) of section 41 of part X of chapter 62 of the laws of 2003, as amended and shall expire and be deemed repealed therewith.