

5924--A

2015-2016 Regular Sessions

I N S E N A T E

June 12, 2015

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

1 Section 1. The opening paragraph of subdivision 1 of section 103 of
2 the general municipal law, as amended by section 1 of chapter 2 of the
3 laws of 2012, is amended to read as follows:
4 Except as otherwise expressly provided by an act of the legislature or
5 by a local law adopted prior to September first, nineteen hundred
6 fifty-three, all contracts for public work involving an expenditure of
7 more than thirty-five thousand dollars and all purchase contracts
8 involving an expenditure of more than twenty thousand dollars, shall be
9 awarded by the appropriate officer, board or agency of a political
10 subdivision or of any district therein including but not limited to a
11 soil conservation district to the lowest responsible bidder furnishing
12 the required security after advertisement for sealed bids in the manner
13 provided by this section, provided, however, that purchase contracts
14 (including contracts for service work, but excluding any purchase
15 contracts necessary for the completion of a public works contract pursu-
16 ant to article eight of the labor law) may be awarded on the basis of
17 best value, as defined in section one hundred sixty-three of the state
18 finance law; PROVIDED, HOWEVER, A CITY WITH A POPULATION OF ONE MILLION
19 INHABITANTS OR MORE MAY ALSO IDENTIFY A QUANTITATIVE FACTOR TO BE USED
20 IN EVALUATION OF BIDS OR OFFERS FOR AWARDING CONTRACTS FOR BIDDERS OR
21 OFFERERS THAT ARE MINORITY- OR WOMEN-OWNED BUSINESS ENTERPRISES CERTI-
22 FIED PURSUANT TO LOCAL LAW, to a responsive and responsible bidder or

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

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

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

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

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

26 (a) Notwithstanding any general, special or local law or rule or regu-
27 lation to the contrary, an officer, board or agency of any county, any
28 school district or any political subdivision of the state with a popu-
29 lation of fifty thousand or more charged with awarding a contract for
30 public work, AND AN OFFICER, BOARD OR AGENCY IN A CITY WITH A POPULATION
31 OF ONE MILLION INHABITANTS OR MORE CHARGED WITH AWARDING A PURCHASE
32 CONTRACT, may establish guidelines governing the qualifications of
33 bidders seeking to bid or enter into such contracts. If such officer,
34 board or agency maintains an appropriate list of qualified bidders, the
35 bidding shall be restricted to those who have qualified prior to the
36 receipt of bids according to standards fixed by such officer, board or
37 agency. In determining whether a prospective bidder qualifies for inclu-
38 sion on a list of pre-qualified bidders, the officer, board or agency
39 shall consider the experience and record of performance of the prospec-
40 tive bidder in the particular type of work, as well as: (i) the prospec-
41 tive bidder's ability to undertake the particular type and complexity of
42 work; (ii) the financial capability, responsibility and reliability of
43 the prospective bidder for such type and complexity of work; (iii) the
44 record of the prospective bidder in complying with existing labor stand-
45 ards and maintaining harmonious labor relations; (iv) the prospective
46 bidder's compliance with equal employment opportunity requirements and
47 anti-discrimination laws, and demonstrated commitment to working with
48 minority and women-owned businesses through joint ventures or subcon-
49 tractor relationships; and (v) the record of the prospective bidder in
50 protecting the health and safety of workers on public works projects and
51 job sites as demonstrated by the prospective bidder's experience modifi-
52 cation rate for each of the last three years.

53 S 4. The New York city charter is amended by adding a new section
54 314-a to read as follows:

55 S 314-A. SHELTERED MARKET. THE PROCUREMENT POLICY BOARD MAY PROVIDE BY
56 RULE THAT AGENCIES MAY MAKE PROCUREMENTS OF GOODS, SERVICES,

1 CONSTRUCTION, OR CONSTRUCTION-RELATED SERVICES FOR AMOUNTS NOT EXCEEDING
2 TWO HUNDRED THOUSAND DOLLARS FROM MINORITY- OR WOMEN-OWNED BUSINESS
3 ENTERPRISES CERTIFIED PURSUANT TO SECTION THIRTEEN HUNDRED FOUR OF THIS
4 CHAPTER WITHOUT A FORMAL COMPETITIVE PROCESS.

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

12 S 6. This act shall take effect immediately and shall apply to any
13 contract let or awarded on or after such date; provided, however that
14 the amendments to subdivision 1 of section 103 of the general municipal
15 law made by section one of this act shall not affect the expiration and
16 reversion of such subdivision as provided in subdivision (a) of section
17 41 of part X of chapter 62 of the laws of 2003, as amended and shall
18 expire and be deemed repealed therewith.