STATE OF NEW YORK

5510

2017-2018 Regular Sessions

IN ASSEMBLY

February 9, 2017

Introduced by M. of A. BRINDISI -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to requiring state agencies to give preference to food products, commodities, and services from New York state; to amend the state finance law, public authorities law, the highway law, the general municipal law, and the public buildings law, in relation to requiring the use of New York made iron, steel and manufactured products in certain government contracts; to amend the tax law in relation to creating a tax credit for New York state businesses that source materials and supplies manufactured by other New York state businesses; and to repeal certain provisions of the public authorities law and the state finance law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known as the "Buy New York Act".

§ 2. Paragraph a of subdivision 4 of section 165 of the state finance law, as amended by chapter 533 of the laws of 2013, is amended to read as follows:

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~~] **shall** 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**, provided that such contracts for food products are priced competitively**.

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

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§ 3. Subparagraph (ii) of paragraph a of subdivision 3 of section 163 of the state finance law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

(ii) Commodities contracts shall be awarded on the basis of lowest price to a responsive and responsible offerer**, with preference given to commodity contracts from New York companies, if such contracts are priced competitively**; or, in the case of multiple awards, in accordance with paragraph c of subdivision ten of this section.

§ 4. Paragraph d of subdivision 4 of section 163 of the state finance law, as added by chapter 83 of the laws of 1995, is amended to read as follows:

d. Service contracts shall be awarded on the basis of best value to a responsive and responsible offerer**, with preference given to service contracts from New York companies, if such contracts are priced competitively**; or, in the case of multiple awards, in accordance with paragraph c of subdivision ten of this section.

§ 5. Section 146 of the state finance law is REPEALED and a new section 146 is added to read as follows:

§ 146. New York materials. 1. Use of New York materials. (a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a public building of public works made by a public agency shall contain a provision that the iron, steel, and manufactured products used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into the public building or public works shall be manufactured in New York, provided such contract is priced competitively.

(b) For the purposes of section one hundred sixty-three of this chapter, no bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.

(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the executive head of a public agency finds:

(i) that the application of this section would be inconsistent with the public interest;

(ii) that such materials and products are not produced in New York in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) that inclusion of New York material will increase the cost of the overall project contract by more than twenty-five percent.

(d) If the executive receives a request for a waiver under paragraph (c) of this subdivision, the executive shall provide notice of and an opportunity for public comment on the request at least thirty days before making a finding based on the request.

(e) A notice provided under paragraph (d) of this subdivision shall:

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

(ii) be posted prominently on the official public internet web site of the agency; and

(iii) be provided by electronic means to any person, firm or corporation that has made a written or electronic request to the public agency for notice of waiver actions by the executive within five (5) years prior to the date of notice.

(f) If the executive issues a waiver under paragraph (c) of this subdivision, the executive shall publish in the same manner as the original notice a detailed justification for the waiver that:

(i) addresses the public comments received under paragraph (d) of this subdivision; and

(ii) is published before the waiver takes effect.

(g) If it has been determined by a court or federal or state agency that any person intentionally:

(i) affixed a label bearing a "Made in New York" inscription, or any inscription with the same meaning, to any iron, steel or manufactured product used in projects to which this section applies, sold in or shipped to New York that was not made in New York; or

(ii) represented that any iron, steel or manufactured product used in projects to which this section applies that was not produced in New York, was produced in New York; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of this article.

(h) This section shall be applied in a manner consistent with the state's obligations under any applicable international agreements pertaining to government procurement.

2. Definitions. For the purposes of this section, the following words shall have the following meanings unless specified otherwise:

(a) "Executive" means the executive head of a public agency subject to this section;

(b) "Public agency" means a governmental entity as that term is defined in section one hundred thirty-nine-j of this article;

(c) "Manufactured in New York" means: (i) in the case of an iron or steel product all manufacturing must take place in New York, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives; and

(ii) in the case of a manufactured product, a product will be considered manufactured in New York if:

(A) all of its manufacturing processes take place in New York, and

(B) more than sixty percent of the components of the manufactured good, by cost, are of New York origin. If, under the terms of this subparagraph, a component is determined to be of New York origin, its entire cost may be used in calculating the cost of New York content of an end product.

(d) "New York" means the state of New York and includes all territory subject to the jurisdiction of New York state.

§ 6. Section 2603-a of the public authorities law is REPEALED and a new section 2877-a is added to read as follows:

§ 2877-a. New York materials. 1. Use of New York materials. (a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a public building of public works made by a public agency shall contain a provision that the iron, steel, and manufactured products used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into the public building or public works shall be manufactured in New York, provided such contract is priced competitively.

(b) For the purposes of section one hundred sixty-three of this chapter, no bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered

by such bidder will comply with the contract term required by paragraph (a) of this subdivision.

(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the executive head of a public agency finds:

(i) that the application of this section would be inconsistent with the public interest;

(ii) that such materials and products are not produced in New York in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) that inclusion of New York material will increase the cost of the overall project contract by more than twenty-five percent.

(d) If the executive receives a request for a waiver under paragraph (c) of this subdivision, the executive shall provide notice of and an opportunity for public comment on the request at least thirty days before making a finding based on the request.

(e) A notice provided under paragraph (d) of this subdivision shall:

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

(ii) be posted prominently on the official public internet web site of the agency; and

(iii) be provided by electronic means to any person, firm or corporation that has made a written or electronic request to the public agency for notice of waiver actions by the executive within five (5) years prior to the date of notice.

(f) If the executive issues a waiver under paragraph (c) of this subdivision, the executive shall publish in the same manner as the original notice a detailed justification for the waiver that:

(i) addresses the public comments received under paragraph (d) of this subdivision; and

(ii) is published before the waiver takes effect.

(g) If it has been determined by a court or federal or state agency that any person intentionally:

(i) affixed a label bearing a "Made in New York" inscription, or any inscription with the same meaning, to any iron, steel or manufactured product used in projects to which this section applies, sold in or shipped to New York that was not made in New York; or

(ii) represented that any iron, steel or manufactured product used in projects to which this section applies that was not produced in New York, was produced in New York; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of the state finance law.

(h) This section shall be applied in a manner consistent with the state's obligations under any applicable international agreements pertaining to government procurement.

2. Definitions. For the purposes of this section, the following words shall have the following meanings unless specified otherwise:

(a) "Executive" means the executive head of a public agency subject to this section;

(b) "Public agency" means a governmental entity as that term is defined in section one hundred thirty-nine-j of the state finance law;

(c) "Manufactured in New York" means: (i) in the case of an iron or steel product all manufacturing must take place in New York, from the

initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives; and

(ii) in the case of a manufactured product, a product will be considered manufactured in New York if:

(A) all of its manufacturing processes take place in New York, and

(B) more than sixty percent of the components of the manufactured good, by cost, are of New York origin. If, under the terms of this subparagraph, a component is determined to be of New York origin, its entire cost may be used in calculating the cost of New York content of an end product.

(d) "New York" means the state of New York and includes all territory subject to the jurisdiction of New York state.

§ 7. Section 38 of the highway law is amended by adding a new subdivision 10 to read as follows:

10. Use of New York materials. (a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a highway or other public works made by a public agency shall contain a provision that the iron, steel, and manufactured products used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into the public building or public works shall be manufactured in New York, provided that such contracts are priced competitively.

(b) No bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.

(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the executive head of a public agency finds:

(i) that the application of this subdivision would be inconsistent with the public interest;

(ii) that such materials and products are not produced in New York in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) that inclusion of New York material will increase the cost of the overall project contract by more than twenty-five percent.

(d) If the executive receives a request for a waiver under paragraph (c) of this subdivision, the executive shall provide notice of and an opportunity for public comment on the request of at least thirty days before making a finding based on the request.

(e) A notice provided under paragraph (d) of this subdivision shall:

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

(ii) be posted prominently on the official public internet web site of the agency; and

(iii) be provided by electronic means to any person, firm or corporation that has made a written or electronic request to the public agency for notice of waiver actions by the executive within five (5) years prior to the date of notice.

(f) If the executive issues a waiver under paragraph (c) of this subdivision, the executive shall publish in the same manner as the original notice a detailed justification for the waiver that:

(i) addresses the public comments received under paragraph (d) of this subdivision; and

(ii) is published before the waiver takes effect.

(g) If it has been determined by a court or federal or state agency that any person intentionally:

(i) affixed a label bearing a "Made in New York" inscription, or any inscription with the same meaning, to any iron, steel or manufactured product used in projects to which this subdivision applies, sold in or shipped to New York that was not made in New York; or

(ii) represented that any iron, steel, or manufactured product used in projects to which this section applies that was not produced in New York, was produced in New York; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of the state finance law.

(h) This subdivision shall be applied in a manner consistent with the state's obligations under any applicable international agreements pertaining to government procurement.

(i) Definitions. For the purpose of this subdivision, the following words shall have the following meanings unless specified otherwise:

(i) "Executive" means the executive head of a public agency subject to this subdivision;

(ii) "Public agency" means a governmental entity as that term is defined in section one hundred thirty-nine-j of the state finance law;

(iii) "Manufactured in New York" means: (A) in the case of an iron or steel product all manufacturing must take place in New York, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives; and

(B) in the case of a manufactured product, a product will be considered manufactured in New York if:

(1) all of its manufacturing processes take place in New York, and

(2) more than sixty percent of the components of the manufactured good, by cost, are of New York origin. If, under the terms of this part, a component is determined to be of New York origin, its entire cost may be used in calculating the cost of New York content of an end product.

(iv) "New York" means the state of New York and includes all territory subject to the jurisdiction of New York state.

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

17. Use of New York materials. (a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a highway or other public works made by a public agency shall contain a provision that the iron, steel, and manufactured products used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into the public building or public works shall be manufactured in New York, provided that such contracts are priced competitively.

(b) No bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.

(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the executive head of a public agency finds:

(i) that the application of this subdivision would be inconsistent with the public interest;

(ii) that such materials and products are not produced in New York in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) that inclusion of New York material will increase the cost of the overall project contract by more than twenty-five percent.

(d) If the executive receives a request for a waiver under paragraph (c) of this subdivision, the executive shall provide notice of and an opportunity for public comment on the request of at least thirty days before making a finding based on the request.

(e) A notice provided under paragraph (d) of this subdivision shall:

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

(ii) be posted prominently on the official public internet web site of the agency; and

(iii) be provided by electronic means to any person, firm or corporation that has made a written or electronic request to the public agency for notice of waiver actions by the executive within five (5) years prior to the date of notice.

(f) If the executive issues a waiver under paragraph (c) of this subdivision, the executive shall publish in the same manner as the original notice a detailed justification for the waiver that:

(i) addresses the public comments received under paragraph (d) of this subdivision; and

(ii) is published before the waiver takes effect.

(g) If it has been determined by a court or federal or state agency that any person intentionally:

(i) affixed a label bearing a "Made in New York" inscription, or any inscription with the same meaning, to any iron, steel or manufactured product used in projects to which this subdivision applies, sold in or shipped to New York that was not made in New York; or

(ii) represented that any iron, steel, or manufactured product used in projects to which this section applies that was not produced in New York, was produced in New York; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of the state finance law.

(h) This subdivision shall be applied in a manner consistent with the state's obligations under any applicable international agreements pertaining to government procurement.

(i) Definitions. For the purpose of this subdivision, the following words shall have the following meanings unless specified otherwise:

(i) "Executive" means the executive head of a public agency subject to this subdivision;

(ii) "Public agency" means a governmental entity as that term is defined in section one hundred thirty-nine-j of the state finance law;

(iii) "Manufactured in New York" means: (A) in the case of an iron or steel product all manufacturing must take place in New York, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives; and

(B) in the case of a manufactured product, a product will be considered manufactured in New York if:

(1) all of its manufacturing processes take place in New York, and

(2) more than sixty percent of the components of the manufactured good, by cost, are of New York origin. If, under the terms of this part, a component is determined to be of New York origin, its entire cost may be used in calculating the cost of New York content of an end product.

(iv) "New York" means the state of New York and includes all territory subject to the jurisdiction of New York state.

§ 9. Section 8 of the public buildings law is amended by adding a new subdivision 8 to read as follows:

8. Use of New York materials. (a) Notwithstanding any other provision of law, each contract for the construction, reconstruction, alteration or improvement of a highway or other public works made by a public agency shall contain a provision that the iron, steel, and manufactured products used or supplied in the performance of the contract or any subcontract thereto and permanently incorporated into the public building or public works shall be manufactured in New York, provided that such contracts are priced competitively.

(b) No bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.

(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the executive head of a public agency finds:

(i) that the application of this subdivision would be inconsistent with the public interest;

(ii) that such materials and products are not produced in New York in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) that inclusion of New York material will increase the cost of the overall project contract by more than twenty-five percent.

(d) If the executive receives a request for a waiver under paragraph (c) of this subdivision, the executive shall provide notice of and an opportunity for public comment on the request of at least thirty days before making a finding based on the request.

(e) A notice provided under paragraph (d) of this subdivision shall:

(i) summarize the information available to the executive concerning the request, including whether the request is being made under subparagraph (i), (ii) or (iii) of paragraph (c) of this subdivision;

(ii) be posted prominently on the official public internet web site of the agency; and

(iii) be provided by electronic means to any person, firm or corporation that has made a written or electronic request to the public agency for notice of waiver actions by the executive within five (5) years prior to the date of notice.

(f) If the executive issues a waiver under paragraph (c) of this subdivision, the executive shall publish in the same manner as the original notice a detailed justification for the waiver that:

(i) addresses the public comments received under paragraph (d) of this subdivision; and

(ii) is published before the waiver takes effect.

(g) If it has been determined by a court or federal or state agency that any person intentionally:

(i) affixed a label bearing a "Made in New York" inscription, or any inscription with the same meaning, to any iron, steel or manufactured product used in projects to which this subdivision applies, sold in or shipped to New York that was not made in New York; or

(ii) represented that any iron, steel, or manufactured product used in projects to which this section applies that was not produced in New York, was produced in New York; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of the state finance law.

(h) This subdivision shall be applied in a manner consistent with the state's obligations under any applicable international agreements pertaining to government procurement.

(i) Definitions. For the purpose of this subdivision, the following words shall have the following meanings unless specified otherwise:

(i) "Executive" means the executive head of a public agency subject to this subdivision;

(ii) "Public agency" means a governmental entity as that term is defined in section one hundred thirty-nine-j of the state finance law;

(iii) "Manufactured in New York" means: (A) in the case of an iron or steel product all manufacturing must take place in New York, from the initial melting stage through the application of coatings, except metallurgical processes involving the refinement of steel additives; and

(B) in the case of a manufactured product, a product will be considered manufactured in New York if:

(1) all of its manufacturing processes take place in New York, and

(2) more than sixty percent of the components of the manufactured good, by cost, are of New York origin. If, under the terms of this part, a component is determined to be of New York origin, its entire cost may be used in calculating the cost of New York content of an end product.

(iv) "New York" means the state of New York and includes all territory subject to the jurisdiction of New York state.

§ 10. Section 210-B of the tax law is amended by adding a new subdivision 49 to read as follows:

49. Qualified products local sourcing credit. (a) Businesses subject to tax liability under article nine or nine-A of this chapter, purchasing qualified products may claim the qualified products local sourcing tax credit against any such liability at the close of the tax year provided, however, that the unused portion of any tax credit claimed shall not be carried forward and applied in another tax year.

(b) For the purposes of this section the following terms shall have the following meanings:

(1) "qualified products" shall mean any materials, components, or supplies whether used in the manufacturing process or otherwise that are produced in New York state by a New York state business;

(2) "producer" is an individual (whether acting individually or through a cooperative, corporation, partnership, business association, or educational institution) who is a business or manufacturer of goods in New York state, it shall not however include a wholesaler or distributor;

(3) "purchaser" is an individual (whether acting individually or through a cooperative, corporation, partnership, business association, or educational institution) who is a business or manufacturer of goods in New York state, it shall not however include a wholesaler or distributor;

(4) "net sales" are the total sales of the business subject to tax.

(c) The amount of the credit shall be prescribed according to the following schedule:

(1) twenty percent of net sales are attributed to qualified products the credit shall be one thousand five hundred dollars.

(2) forty percent of net sales are attributed to qualified products the credit shall be three thousand dollars.

(3) sixty percent of net sales are attributed to qualified products the credit shall be six thousand dollars.

(4) eighty percent of net sales are attributed to qualified products the credit shall be twelve thousand dollars.

(5) one hundred percent of net sales are attributed to qualified products the credit shall be twenty-five thousand dollars.

(d) (1) Businesses claiming the qualified products local sourcing credit shall submit a computer-generated report with tax returns that claim a tax credit.

(2) Such report shall include the name of the producer and the physical place of the business where the products are produced.

(3) The amount paid by the purchaser to the producer and the amount of units purchased.

§ 11. Severability. If any provisions of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provisions or application, and to that extent, the provisions of this act are declared to be severable.

§ 12. This act shall take effect immediately, provided, however, that the amendments to subparagraph (ii) of paragraph a of subdivision 3 and paragraph d of subdivision 4 of section 163 of the state finance law made by sections three and four of this act shall not affect the repeal of such subparagraph and paragraph and shall be deemed repealed therewith.