

STATE OF NEW YORK

6513

2017-2018 Regular Sessions

IN SENATE

May 30, 2017

Introduced by Sens. ALCANTARA, SAVINO -- read twice and ordered printed,
and when printed to be committed to the Committee on Cities

AN ACT to amend the general municipal law, the New York city charter and
the administrative code of the city of New York, in relation to oppor-
tunities for small businesses, minority and women-owned business
enterprises and emerging business enterprises

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

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

3 § 103-h. Mentoring program. 1. A city with a population of one million
4 or more inhabitants, and any district, board or agency with jurisdiction
5 exclusively therein, may establish a mentoring program for small busi-
6 nesses in the construction trades and professional services. In
7 connection therewith, the city, district, board or agency may determine
8 the criteria pursuant to which a business shall be eligible for, and
9 selected as, a mentee business participating in the components of the
10 program under paragraph c of subdivision five of this section, the
11 number of mentee businesses to participate in each such component of the
12 program, the criteria for the competitive selection of the firms that
13 will provide mentoring services, the assignment of a mentor to a specif-
14 ic mentee business, and the funding for the program.

15 2. Such a city, district, board or agency is authorized, notwithstand-
16 ing any other provision of law;

17 a. to designate which eligible contracts shall be mentoring program
18 contracts under subparagraphs one and two of paragraph c of subdivision
19 five of this section, respectively;

20 b. to establish standards for qualifying mentee businesses to compete
21 for a mentoring program contract, provided that no less than three qual-
22 ified mentee businesses in the program must submit responsive offers to
23 perform the contract;

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

LBD11891-02-7

1 c. to determine when bids or proposals for a mentoring program
2 contract should be restricted to mentee businesses that, prior to the
3 receipt of bids or proposals, have been qualified for such competition;

4 d. to competitively select, designate and contract with one or more
5 experienced firms that, under the general supervision of the contracting
6 agency, will provide mentoring services to the mentee businesses, and to
7 assign such mentors one or more designated mentee businesses;

8 e. to assist mentee businesses that have been awarded mentoring
9 program contracts to obtain any surety bond or contract of insurance
10 required of them in connection with such contract only, notwithstanding
11 any provision of section two thousand five hundred four of the insurance
12 law to the contrary; and

13 f. in addition to the benefits of such program and notwithstanding any
14 other provision of law, to provide mentee businesses technical assist-
15 ance in obtaining bid, payment and performance bonding for contracts
16 that are not mentoring program contracts, for which the businesses are
17 otherwise qualified.

18 3. If the total number of qualified mentee businesses that respond to
19 a competition and are considered capable of meeting the specifications
20 and terms of the invitation to compete is less than three, or if the
21 contracting agency determines that acceptance of the best offer will
22 result in the payment of an unreasonable price, the contracting agency
23 may reject all offers and withdraw the designation of the contract as a
24 mentoring program contract. If the contracting agency withdraws the
25 designation of the contract as a mentoring program contract, the mentee
26 businesses, if any, that made offers shall be notified.

27 4. A mentor shall provide services and assistance to a mentee business
28 as designated by the city, district, board or agency, which may include
29 the following:

30 a. provide business training in the skills necessary to operate a
31 successful business and to compete for and perform a contract;

32 b. provide technical assistance to the mentee business to assess the
33 outcome if the mentee business competes for, but is not awarded, a
34 contract;

35 c. if the mentoring program contract is awarded to the mentee busi-
36 ness, provide guidance, advice and technical assistance to the mentee
37 business in the performance of the contract; and

38 d. provide other technical assistance to the mentee business to facil-
39 itate learning, training and other issues which may arise.

40 5. As used in this section:

41 a. "Small business" means a business which (1) is independently owned
42 and operated; (2) has annual revenues not exceeding a fiscal limitation
43 of five million dollars or such lesser amount as established by the
44 city, district, board or agency pursuant to this section; and (3) meets
45 additional criteria as otherwise established by the city, district,
46 board or agency.

47 b. "Mentoring program contract" means a contract designated by the
48 city, district, board or agency, in an estimated amount of not more than
49 one million dollars for contracts under subparagraph one of paragraph c
50 of this subdivision and three million dollars for contracts under
51 subparagraph two of such paragraph, for which bids or proposals are to
52 be invited and accepted only from businesses that are enrolled in the
53 mentoring program and have been selected by the contracting agency to
54 compete for the contract.

55 c. "Mentoring program" is a program established pursuant to this
56 section to provide mentee businesses with the opportunity:

(1) for up to four years, to compete for and, where awarded, to perform certain contracts designated for inclusion in the mentoring program, with the assistance of a competitively selected mentor firm that has extensive management and mentoring experience, with the mentor providing the mentee business with advice and assistance in competing for and managing contracts; and

(2) for a mentee business that the city, district, board or agency has determined has successfully completed the program under subparagraph one of this paragraph, for up to four additional years, to be provided: (A) additional opportunities to compete with other designated mentee businesses in the program for certain contracts to be designated for inclusion under this subparagraph and, where awarded, to perform such contracts, with the further assistance of a competitively selected mentor firm that has extensive management and mentoring experience; with the mentor providing the mentee with advice and technical assistance in competing for and managing contracts; and (B) assistance, as determined by the city, district, board or agency, for such a mentee business to obtain bonding for contracts that are competitively awarded pursuant to any other provision of law.

d. "Professional services" means services that require specialized skills and the exercise of judgment, including, but not limited to: (1) financial services, including, but not limited to, accounting, asset management, municipal bond finance, and underwriting; (2) legal services, including, but not limited to, attorneys, paralegals, stenographers and administrative services; (3) information technology services, including, but not limited to, software development, maintenance, support and consulting; (4) construction related services, including, but not limited to, architecture, engineering, construction supervision, construction management, planning, surveys, reports, testing, investigation, printing and blueprinting; (5) advertising and marketing; (6) administrative and clerical services; and (7) consultants.

6. Commencing on October first, two thousand nineteen, such city shall submit an annual report to the governor and the legislature that contains the following information for the preceding city fiscal year:

a. the total number and total dollar value of mentoring program contracts awarded for the construction trades;

b. the total number and total dollar value of mentoring program contracts awarded for professional services; and

c. mentoring program participation rates.

§ 2. Section 311 of the New York city charter is amended by adding a new subdivision i to read as follows:

i. In addition to other rules authorized by this section, the board may provide by rule that:

1. agencies may make procurements of goods and services for amounts not exceeding two hundred thousand dollars from business enterprises certified pursuant to section thirteen hundred four of this charter, or joint ventures that include such certified enterprises, without a formal competitive process.

2. agencies may award contracts for goods, standard services and professional services on the basis of best value to the bidder or offerer which optimizes quality, cost and efficiency, among responsive and responsible bidders or offerers. Such basis shall reflect, wherever possible, objective and quantifiable analysis and may include the prospective bidder's record of complying with existing labor standards, maintaining harmonious labor relations, and protecting the health and

safety of workers. Such basis may also identify a quantitative factor consisting of points awarded in the evaluation of a bid or price preference to be used in evaluation of bids or offers for awarding of contracts for bidders or offerers that are small businesses as defined in section one hundred sixty of the state finance law or business certified pursuant to section thirteen hundred four of this charter.

3. agencies awarding contracts for construction may identify a quantitative factor consisting of points awarded in the evaluation of a bid or a price preference to be used in evaluation of bids or offers for awarding of contracts for bidders or offerers that are small businesses as defined in section one hundred sixty of the state finance law or business certified pursuant to section thirteen hundred four of this charter.

4. the rule or rules promulgated pursuant to paragraph one of this subdivision shall provide that the city shall, commencing on the first of October of the first full calendar year following the adoption of such rule or rules, submit an annual report to the governor and the state legislature of the total number and total dollar value of procurements of goods, standard services, professional services and construction for amounts not exceeding two hundred thousand dollars from:

(i) business enterprises certified pursuant to section thirteen hundred four of this charter, or joint ventures that include such certified enterprises; and

(ii) all other businesses.

§ 3. Subdivision a of section 324 of the New York city charter, as amended by local law number 17 of the city of New York for the year 2004, is amended to read as follows:

a. Agencies may maintain lists of prequalified vendors and entry into a prequalified group shall be continuously available. Prospective vendors may be prequalified as contractors for the provision of particular types of goods, services and construction, in accordance with general criteria established by rule of the procurement policy board which may include, but shall not be limited to, the experience, past performance, ability to undertake work, financial capability, responsibility, ~~and~~ reliability of prospective bidders, and their status as a small business as defined in section one hundred sixty of the state finance law or a business certified pursuant to section thirteen hundred four of this charter, or their demonstrated commitment to working with such businesses through joint ventures or subcontractor relationships, and which may be supplemented by criteria established by rule of the agency for the prequalification of vendors for particular types of goods, services or construction or by criteria published in the City Record by the agency prior to the prequalification of vendors for a particular procurement. Such prequalification may be by categories designated by size and other factors.

§ 4. Subdivision b of section 6-129 of the administrative code of the city of New York, as amended by local law number 1 of the city of New York for the year 2013, is amended to read as follows:

b. Policy. It is the policy of the city to seek to ensure fair participation in city procurement; and in furtherance of such policy to fully and vigorously enforce all laws prohibiting discrimination, and to promote equal opportunity in city procurement by vigorously enforcing the city's contractual rights and pursuing its contractual remedies. The program established pursuant to this section is intended to address the impact of discrimination on the city's procurement process, and to

1 promote the public interest in avoiding fraud and favoritism in the
2 procurement process, increasing competition for city business, and
3 lowering contract costs. This is consistent with assuring the prudent
4 and economical use of public moneys for the benefit of all the inhabit-
5 ants of the state and to facilitate the acquisition of facilities and
6 commodities of maximum quality at the lowest possible cost. Firms seek-
7 ing procurement opportunities will be able to offer the best possible
8 bids and proposals only if the impact of discrimination in the market
9 has been remedied. Requiring such firms to expand the universe of
10 subcontractors employed for public contracts is expected to improve the
11 quality of competition for subcontracting opportunities and to favorably
12 affect prices over time. In addition, requirements that prime contrac-
13 tors employ minority-owned, women-owned and emerging business enter-
14 prises as subcontractors and suppliers will enable such enterprises to
15 grow into larger companies with the capacity and experience necessary to
16 become prime contractors, and should thus expand the overall pool of
17 firms submitting bids and proposals, resulting in an additional favora-
18 ble impact on the prices of procurements over time.

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

26 § 6. This act shall take effect immediately and shall apply to any
27 contract entered into, renewed, modified or amended on or after such
28 date.