STATE OF NEW YORK

8407

2019-2020 Regular Sessions

IN ASSEMBLY

June 16, 2019

Introduced by M. of A. BICHOTTE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the New York city charter, the education law and the public authorities law, in relation to opportunities for small businesses and businesses owned by women and minorities

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

Section 1. Legislative findings. The legislature finds that disparity studies conducted by the state and the city of New York demonstrate the continuing effects of discrimination on businesses owned by minorities and women in the market where the city conducts its procurements. Therefore, it continues to be appropriate for the city of New York to establish and implement reasonable procedures to secure the meaningful participation of minority and women-owned businesses, as well as emerging business enterprises, in its procurement process, including but not limited to measures already authorized by state and local legislation and rules and the measures authorized in this act.

§ 2. Paragraph 1 of subdivision i of section 311 of the New York city charter, as amended by chapter 19 of the laws of 2018, is amended to read as follows:

1. agencies may make procurements of goods [~~and~~], services and construction for amounts not exceeding [~~one~~] five hundred [~~fifty~~] thousand dollars from businesses certified as minority or women-owned business enterprises pursuant to section thirteen hundred four of the charter without a formal competitive process.

§ 3. Subdivision a of section 324 of the New York city charter, as amended by local law number 17 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 partic-

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

LBD11067-09-9

ular 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 certified minority and women owned business enterprise pursuant to section thirteen hundred four of the charter,** 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. The New York city charter is amended by adding a new section 1206 to read as follows:

§ 1206. Mentoring program. 1. The department of design and construction may establish a mentoring program for small businesses and minority and women owned business enterprises that have been certified pursuant to section thirteen hundred four of the charter in the construction trades. The department of design and construction may determine the criteria pursuant to which a business shall be eligible for and selected as a mentee business participating in the components of such a program under paragraph c of subdivision five of this section, the number of mentee businesses to participate in each such component of such a program, the criteria for the competitive selection of the firms that will provide mentoring services, and the assignment of a mentor to a specific mentee business.

2. The department of design and construction shall be authorized, notwithstanding any other provision of law:

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

b. to establish standards for qualifying mentee businesses to compete for a mentoring program contract, provided that no less than two qualified mentee businesses in the program must submit responsive offers to perform the contract;

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

d. to competitively select, designate and contract with one or more experienced firms that, under the general supervision of the department of design and construction, will provide mentoring services to the mentee businesses, and to assign such mentors one or more designated mentee businesses;

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

f. in addition to the benefits of such program and notwithstanding any other provision of law, to provide mentee businesses technical assistance in obtaining bid, payment and performance bonding for contracts that are not mentoring program contracts, for which the businesses are otherwise qualified.

3. If the total number of qualified mentee businesses that respond to a competition and are considered capable of meeting the specifications

and terms of the invitation to compete is less than two, or if the department of design and construction determines that acceptance of the best offer will result in the payment of an unreasonable price, the department of design and construction shall reject all offers and withdraw the designation of the contract as a mentoring program contract. If the department of design and construction withdraws the designation of the contract as a mentoring program contract, the mentee businesses, if any, that made offers shall be notified.

4. A mentor shall provide services and assistance to a mentee business as designated by the department of design and construction, which may include the following:

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

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

c. if the mentoring program contract is awarded to the mentee business, provide guidance, advice and technical assistance to the mentee business in the performance of the contract; and

d. provide other technical assistance to the mentee business to facilitate learning, training and other issues which may arise.

5. As used in this section:

a. "Small business" means a business which (1) is independently owned and operated; and (2) has annual revenues not exceeding a fiscal limitation of five million dollars or such lesser amount as established by the department of design and construction pursuant to this section.

b. "Mentoring program contract" means a contract designated by the department of design and construction, in an estimated amount of not more than one million five hundred thousand dollars for contracts under subparagraph one of paragraph c of this subdivision and three million dollars for contracts under subparagraph two of such paragraph, for which bids or proposals are to be invited and accepted only from businesses that are enrolled in a mentoring program and have been selected by the department of design and construction to compete for the contract.

c. "Mentoring program" is a program established pursuant to this 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 department of design and construction has determined has successfully completed the program under subparagraph one of this paragraph, for up to four additional years, (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 department of design and construction, for such a mentee business to obtain bonding for contracts that are competitively awarded pursuant to any other provision of law.

6. Commencing on October first, two thousand twenty, the department of design and construction 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; and

b. mentoring program participation rates.

§ 5. Paragraph (a) of subdivision 36 of section 2590-h of the education law, as amended by chapter 345 of the laws of 2009, is amended to read as follows:

(a) Such policy shall specifically include:

(i) a competitive sealed bidding process for the awarding of contracts in which sealed bids are publicly solicited and opened and that a contract is awarded to the lowest responsive, responsible bidder;

(ii) processes for awarding contracts using alternatives to competitive sealed bidding where competitive sealed bidding is not practicable or not advantageous, in which case the most competitive alternative method of procurement, which is appropriate under the circumstances, shall be used consistent with the requirements of subparagraph (vii) of this paragraph;

(iii) measures to enhance the ability of minority and women owned business enterprises **pursuant to section thirteen hundred four of the New York city charter and a certified business as defined in section three hundred ten of the executive law, including firms certified pursuant to article fifteen-A of the executive law and firms certified as minority and women owned business enterprises pursuant to section thirteen hundred four of the New York city charter,** to compete for contracts and to ensure their meaningful participation in the procurement process**. The school district shall have the authority to use the same measures, to enhance minority and women owned business enterprise participation as are available to the city of New York pursuant to article five-A of the general municipal law, section thirteen hundred four of the New York city charter, paragraphs one and two of subdivision i of section three hundred eleven of the New York city charter, and section 6-129 of the administrative code of the city of New York**;

(iv) the manner for administering contracts and overseeing the performance of contracts and contractors;

(v) standards and procedures to be used in determining whether bidders are responsible;

(vi) circumstances under which procurement may be used for the provision of technical, consultant or personal services;

(vii) requiring written justification for the basis, including the efficiency, benefit, and necessity, for awarding a contract using procurement methods other than competitive sealed bidding including competitive sealed proposals and sole source contracts, and for awarding technical, consultant, or personal services contracts, franchises, revocable consents, or concessions. Such written justification shall be filed with the comptroller of the city of New York along with the corresponding contract, franchise, revocable consent, or concession;

(viii) maintaining a file for every contract franchise, revocable consent, and concession containing information pertaining to the solicitation, award and management of every such contract or agreement. Such file shall contain copies of each determination, writing or filing required by this subdivision and shall be open to public inspection with adequate protection for information which is confidential;

(ix) a process for the filing of all contracts, franchises, revocable consents, and concessions with the comptroller of the city of New York;

(x) a process for emergency procurement in the case of an unforeseen danger to life, safety, property or a necessary service provided that such procurement shall be made with such competition as is practicable under the circumstances and that a written determination of the basis for the emergency procurement shall be required and filed with the comptroller of the city of New York when such emergency contract is filed with such comptroller; and

(xi) procedures for the fair and equitable resolution of contract disputes.

§ 6. Paragraph b of subdivision 2 of section 1743 of the public authorities law, as added by chapter 562 of the laws of 1990, is amended to read as follows:

b. The authority shall establish and implement reasonable procedures to secure the meaningful participation of minority and women owned business enterprises in its procurement process. **In addition to procedures it has already adopted for such purpose, the authority may use the same measures, to enhance minority and women owned business enterprise participation, as are available to the city of New York pursuant to article five-A of the general municipal law, section thirteen hundred four of the New York city charter, paragraphs one and two of subdivision i of section three hundred eleven of the New York city charter, and section 6-129 of the administrative code of the city of New York.**

§ 7. This act shall take effect immediately and shall apply to any contract entered into, renewed, modified or amended on or after such date; provided that the amendments to paragraph (a) of subdivision 36 of section 2590-h of the education law made by section five of this act shall not affect the expiration and reversion of such subdivision pursuant to section 34 of chapter 91 of the laws of 2002, as amended and shall be deemed to expire therewith.