

STATE OF NEW YORK

6418

2019-2020 Regular Sessions

IN SENATE

June 10, 2019

Introduced by Sen. PARKER -- (at request of the NYC Small Business Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

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

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

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

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

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

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

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1 a. Agencies may maintain lists of prequalified vendors and entry into
2 a prequalified group shall be continuously available. Prospective
3 vendors may be prequalified as contractors for the provision of partic-
4 ular types of goods, services and construction, in accordance with
5 general criteria established by rule of the procurement policy board
6 which may include, but shall not be limited to, the experience, past
7 performance, ability to undertake work, financial capability, responsi-
8 bility, and reliability of prospective bidders, and their status as a
9 firm certified pursuant to section thirteen hundred four of the charter,
10 and which may be supplemented by criteria established by rule of the
11 agency for the prequalification of vendors for particular types of
12 goods, services or construction or by criteria published in the City
13 Record by the agency prior to the prequalification of vendors for a
14 particular procurement. Such prequalification may be by categories
15 designated by size and other factors.

16 § 4. The New York city charter is amended by adding a new section 1206
17 to read as follows:

18 § 1206. Mentoring program. 1. The department of design and
19 construction may establish a mentoring program for small businesses and
20 businesses that have been certified pursuant to section thirteen hundred
21 four of the charter in the construction trades. The department of design
22 and construction may determine the criteria pursuant to which a business
23 shall be eligible for and selected as a mentee business participating in
24 the components of such a program under paragraph c of subdivision five
25 of this section, the number of mentee businesses to participate in each
26 such component of such a program, the criteria for the competitive
27 selection of the firms that will provide mentoring services, and the
28 assignment of a mentor to a specific mentee business.

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

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

34 b. to establish standards for qualifying mentee businesses to compete
35 for a mentoring program contract, provided that no less than two quali-
36 fied mentee businesses in the program must submit responsive offers to
37 perform the contract;

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

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

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

51 f. in addition to the benefits of such program and notwithstanding any
52 other provision of law, to provide mentee businesses technical assist-
53 ance in obtaining bid, payment and performance bonding for contracts
54 that are not mentoring program contracts, for which the businesses are
55 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 nine 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

1 to obtain bonding for contracts that are competitively awarded pursuant
2 to any other provision of law.

3 6. Commencing on October first, two thousand twenty, the department of
4 design and construction shall submit an annual report to the governor
5 and the legislature that contains the following information for the
6 preceding city fiscal year:

7 a. the total number and total dollar value of mentoring program
8 contracts; and

9 b. mentoring program participation rates.

10 § 5. Paragraph 2 of subsection (a) of section 2504 of the insurance
11 law is amended to read as follows:

12 (2) In paragraph one hereof, "public corporation" and "public authori-
13 ty" shall not include:

14 (A) a public corporation or public authority created pursuant to
15 agreement or compact with another state, or

16 (B) the city of New York, a public corporation or public authority, in
17 connection with the construction of electrical generating and trans-
18 mission facilities or construction, extensions and additions of light
19 rail or heavy rail rapid transit and commuter railroads, or

20 (C) the city of New York, or a public corporation or public authority
21 operating primarily within the city of New York, in connection with
22 contracts that include participation requirements for business enter-
23 prises owned by minorities or women or emerging business enterprises.

24 § 6. Paragraph (a) of subdivision 36 of section 2590-h of the educa-
25 tion law, as amended by chapter 345 of the laws of 2009, is amended to
26 read as follows:

27 (a) Such policy shall specifically include:

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

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

37 (iii) measures to enhance the ability of minority and women owned
38 business enterprises and emerging business enterprises, including firms
39 certified pursuant to article fifteen-A of the executive law and firms
40 certified pursuant to section thirteen hundred four of the New York city
41 charter, to compete for contracts and to ensure their meaningful partic-
42 ipation in the procurement process. The school district shall have the
43 authority to use the same measures as are available to the city of New
44 York pursuant to the general municipal law, the New York city charter,
45 and the administrative code of the city of New York;

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

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

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

52 (vii) requiring written justification for the basis, including the
53 efficiency, benefit, and necessity, for awarding a contract using
54 procurement methods other than competitive sealed bidding including
55 competitive sealed proposals and sole source contracts, and for awarding
56 technical, consultant, or personal services contracts, franchises, revo-

1 cable consents, or concessions. Such written justification shall be
2 filed with the comptroller of the city of New York along with the corre-
3 sponding contract, franchise, revocable consent, or concession;

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

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

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

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

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

24 b. The authority shall establish and implement reasonable procedures
25 to secure the meaningful participation of minority and women-owned busi-
26 ness enterprises in its procurement process. In addition to procedures
27 it has already adopted for such purpose, the authority may use the same
28 measures as are available to the city of New York pursuant to the gener-
29 al municipal law, the New York city charter, and the administrative code
30 of the city of New York.

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