STATE OF NEW YORK

87

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. KAMINSKY, BROOKS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the general municipal law, the state finance law and the infrastructure investment act, in relation to construction and demolition diversion practices of state contractors

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

Section 1. The environmental conservation law is amended by adding a new section 27-0111 to read as follows:

§ 27-0111. Construction and demolition waste diversion policy.

1. Definitions. As used in this section:

(a) "Contractor" means a general contractor and shall also include any subcontractor engaged in the building, demolition or wrecking of a structure for which a permit is required.

(b) "Construction and demolition debris" shall include, but not be limited to, metals, cardboard, drywall, glass, wood, concrete, brick and asphalt, but shall not include any material that is contaminated by lead, asbestos or other hazardous material such that recycling thereof would be illegal or unfeasible.

(c) "Diverted" means the recycle or reuse of construction and demolition debris that would otherwise be disposed of at a landfill or disposal facility.

(d) "Recycle" means the process of sending construction and demolition debris to a recycling facility, transfer station or other waste handling facility permitted pursuant to this article, which accepts construction and demolition debris for recycling or for further transfer to a recycling facility.

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

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(e) "Reuse" means: (i) the on-site use of reprocessed construction and demolition debris if the use of such debris is authorized by the commissioner; and (ii) the off-site redistribution of a material which would otherwise be disposed of, for use in the same or similar form as it was produced.

2. The commissioner shall promulgate rules and regulations, in consultation with the state procurement council established by section one hundred sixty-one of the state finance law, setting forth a goal for the percent of construction and demolition debris diverted by contractors submitting bids or proposals in connection with the award of a state contract. Such rules and regulation shall at a minimum take into account: the cost, feasibility, and human and environmental health impacts of recycling particular types of debris; the availability of secondary markets and proximity of processing facilities; the toxicity of different types of debris and ability to remediate or separate any toxic debris from non-toxic debris; the environmental impact of disposing debris without recycling; the existence of local laws and regulations and policies governing debris diversion.

3. Each bid or proposal shall be analyzed on an individual per bid or per proposal basis with the contractor's construction and demolition waste diversion practices considered as only a part of a wider consideration of several factors when deciding to award or decline to award a bid or proposal. Such assessment shall not in any way permit the automatic rejection of a bid or procurement contract proposal based on lack of adherence to construction and demolition waste diversion practices.

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

17. Notwithstanding the foregoing provisions of this section, the commissioner of the office of general services may authorize any officer, board or agency of a political subdivision to consider whether such contracts can reasonably be expected to meet or further the goal established pursuant to section 27-0111 of the environmental conservation law or comparable local law or regulation, and contractor's history of achieving such participation goals on previous contracts; provided, however, that such consideration shall not affect the responsibilities of an officer, board, or agency of a political subdivision in relation to subdivision one of this section.

§ 3. Subdivision 10 of section 163 of the state finance law is amended by adding a new paragraph g to read as follows:

g. The commissioner may authorize state agencies or other authorized purchasers to consider whether such contracts can reasonably be expected to meet or further the goal established pursuant to section 27-0111 of the environmental conservation law or comparable local law or regulation, and contractor's history of achieving such participation goals on previous contracts.

§ 4. Subdivision (a) of section 4 of part F of chapter 60 of the laws of 2015 constituting the infrastructure investment act, as amended by section 4 of part RRR of chapter 59 of the laws of 2017, is amended to read as follows:

(a) Step one. Generation of a list of entities that have demonstrated the general capability to perform the design-build contract. Such list shall consist of a specified number of entities, as determined by an authorized state entity, and shall be generated based upon the authorized state entity's review of responses to a publicly advertised request for qualifications. The authorized state entity's request for qualifications shall include a general description of the project, the maximum

number of entities to be included on the list, the selection criteria to be used and the relative weight of each criteria in generating the list. Such selection criteria shall include the qualifications and experience of the design and construction team, organization, demonstrated responsibility, ability of the team or of a member or members of the team to comply with applicable requirements, including the provisions of articles 145, 147 and 148 of the education law, **past record of compliance with goals established pursuant to section 27-0111 of the environmental conservation law or comparable local law or regulation,** past record of compliance with the labor law, and such other qualifications the authorized state entity deems appropriate which may include but are not limited to project understanding, financial capability and record of past performance. The authorized state entity shall evaluate and rate all entities responding to the request for qualifications. Based upon such ratings, the authorized state entity shall list the entities that shall receive a request for proposals in accordance with subdivision (b) of this section. To the extent consistent with applicable federal law, the authorized state entity shall consider, when awarding any contract pursuant to this section, the participation of: (i) firms certified pursuant to article 15-A of the executive law as minority or women-owned businesses and the ability of other businesses under consideration to work with minority and women-owned businesses so as to promote and assist participation by such businesses; and (ii) small business concerns identified pursuant to subdivision (b) of section 139-g of the state finance law.

§ 5. This act shall take effect immediately; provided, however, that that amendments to subdivision 10 of section 163 of the state finance law made by section three of this act shall not affect the repeal of such section as provided in subdivision 5 of section 362 of chapter 83 of the laws of 1995, as amended, and shall be deemed repealed therewith; provided further, that the amendments to part F of chapter 60 of the laws of 2015 constituting the infrastructure investment act, made by section four of this act shall not affect the repeal of such part and shall be deemed repealed therewith.