STATE OF NEW YORK

3908--A

2021-2022 Regular Sessions

IN SENATE

February 1, 2021

Introduced by Sens. KENNEDY, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, the general municipal law, the public authorities law and the highway law, in relation to enacting the New York state buy American salt act

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 and may be cited as the "New York state buy American salt act".

§ 2. The state finance law is amended by adding a new section 162-a to read as follows:

§ 162-a. The New York state buy American salt act. 1. Use of American materials. (a) Notwithstanding any other provision of law, each contract for purchase or procurement made by a public agency shall contain a provision that the rock salt, or sodium chloride, used or supplied in the performance of the contract or any subcontract thereto shall be mined or hand harvested in the United States.

(b) For the purposes of section one hundred sixty-three of this article, 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 the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

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

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

LBD07974-02-1

(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 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 America" inscription, or any inscription with the same meaning, to any rock salt, or sodium chloride product used in projects to which this section applies, sold in or shipped to the United States that was not mined or hand harvested in the United States; or

(ii) represented that any rock salt, or sodium chloride product procured in a contract to which this section applies that was not produced in the United States, was produced in the United States; 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 chapter.

(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 chapter;

(c) "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

(d) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 3. The general municipal law is amended by adding a new section 104-d to read as follows:

§ 104-d. The New York state buy American salt act. 1. Use of American materials. (a) Notwithstanding any other provision of law, each contract for purchase or procurement made by a public agency of a political subdivision shall contain a provision that the rock salt, or sodium chloride, used or supplied in the performance of the contract or any

subcontract thereto shall be mined or hand harvested in the United States.

(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 section would be inconsistent with the public interest;

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

(iii) that inclusion of domestic material will increase the cost of the overall procurement 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 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 America" inscription, or any inscription with the same meaning, to any rock salt, or sodium chloride product used in projects to which this section applies, sold in or shipped to the United States that was not mined or hand harvested in the United States; or

(ii) represented that any rock salt, or sodium chloride product procured in a contract to which this section applies that was not produced in the United States, was produced in the United States; 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) "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

(d) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 4. The public authorities law is amended by adding a new section 2877-a to read as follows:

§ 2877-a. The New York state buy American salt act. 1. Use of American materials. (a) Notwithstanding any other provision of law, each contract for purchase or procurement made by a public authority shall contain a provision that the rock salt, or sodium chloride, used or supplied in the performance of the contract or any subcontract thereto shall be mined or hand harvested in the United States.

(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 section would be inconsistent with the public interest;

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

(iii) that inclusion of domestic material will increase the cost of the overall procurement 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 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 America" inscription, or any inscription with the same meaning, to any rock salt, or sodium chloride product used in projects to which this section applies, sold in or shipped to the United States that was not mined or hand harvested in the United States; or

(ii) represented that any rock salt, or sodium chloride product procured in a contract to which this section applies that was not produced in the United States, was produced in the United States; 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 state, local or interstate authority as those terms are defined in section two of this chapter;

(c) "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

(d) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 5. The highway law is amended by adding a new section 12-a to read as follows:

§ 12-a. The New York state buy American salt act. 1. Use of American materials. (a) Notwithstanding any other provision of law, each contract for purchase or procurement made by a public authority shall contain a provision that the rock salt, or sodium chloride, used or supplied in the performance of the contract or any subcontract thereto shall be mined or hand harvested in the United States.

(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 section would be inconsistent with the public interest;

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

(iii) that inclusion of domestic material will increase the cost of the overall procurement 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 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 America" inscription, or any inscription with the same meaning, to any rock salt, or sodium chloride product used in projects to which this section applies, sold in or shipped to the United States that was not mined or hand harvested in the United States; or

(ii) represented that any rock salt, or sodium chloride product procured in a contract to which this section applies that was not produced in the United States, was produced in the United States; 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) "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

(d) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 6. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 7. This act shall take effect immediately.