STATE OF NEW YORK

6770

2021-2022 Regular Sessions

IN SENATE

May 14, 2021

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to certain contracts for the Buffalo Sewer Authority

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

Section 1. Section 1181 of the public authorities law, as amended by chapter 665 of the laws of 1987, is amended to read as follows:

§ 1181. Construction contracts. If the project, or any portion thereof, or any addition, betterment or extension to the facilities, shall be constructed pursuant to a contract for which the estimated cost exceeds [~~seven~~] **five hundred** thousand dollars **prior to the date when work under the authority's long term control plan is completed, or, after such date, the amount provided for expenditures of public work in subdivision one of section one hundred three of the general municipal law**, such contract shall be awarded to the lowest responsible bidder after advertisement for bids. The board may make rules and regulations for the submission of bids and the construction of the project or such portion thereof or such addition, betterment, or extension. No contract shall be entered into for construction of the project or any portion thereof or any addition, betterment or extension to the facilities, or for the purchase of materials, unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the authority and in an amount fixed by the authority, for the faithful performance of the contract. As to contracts entered into for construction, such undertaking shall provide, among other things, that the person or corporation entering into such contract with the authority, will pay for all materials furnished and services rendered for the performance of the contract and that any person or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against

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

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the obligor in the undertaking as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued. Nothing in this section shall be construed to limit the power of the authority to construct the project or any portion thereof or any addition, betterment or extension to the facilities directly by the officers, agents, and employees of the authority or otherwise than by contract. The authority may proceed jointly with the state of New York in the construction of any highway which also includes sewage and storm water facilities and by agreement with the state of New York fix and determine the amount which shall constitute the contribution by the authority toward the cost of the construction by the state of New York of such facilities in connection with the construction or improvement of any highway. The portion of the cost to be paid by the authority shall be deposited with the state comptroller, who is authorized to receive and accept the same. Upon completion of any project authorized by this section the commissioner of transportation shall render to the authority an itemized statement showing in full (a) the amount of money deposited as hereinbefore provided, and (b) all disbursements made pursuant to this section. Any surplus money shall be paid to such authority on the warrant of the comptroller on vouchers therefore approved by the commissioner of transportation.

§ 2. The public authorities law is amended by adding a new section 1181-a to read as follows:

§ 1181-a. Small business set-aside contracts for the authority. 1. Definitions. As used in this section, unless a different meaning clearly appears from the context:

(a) "Minority business concern" shall mean a business enterprise in which at least fifty-one percent is owned by persons who are Native American or Alaskan native, Asian American, Black or African-American, Hispanic or Latino, or Native Hawaiian or Pacific Islander.

(b) "Small business" shall mean a business that is independently owned and operated, and which is not dominant in the field of operation. The authority shall establish a detailed definition by resolution adopted at a public meeting based on factors such as limits in number of employees, annual revenues, and/or personal net worth of owners.

(c) "Small business set-aside" shall mean a request for which bids are to be invited and accepted only from small businesses by the general manager.

2. The general manager has the authority to designate as small business set-asides specified contracts for purchases, services, or construction. The designation shall be made prior to the advertisement for bids as provided by law, and when the advertisement is published it shall indicate the purchases or work that have been designated as small business set-asides. To effectuate the purposes of this section, the general manager may exercise this authority whenever there is a reasonable expectation that bids will be obtained from at least three small businesses capable of furnishing the desired property or service at a fair and reasonable price.

3. In the case of contracts designated as small business set-asides, invitations to bid shall be confined to small businesses and bids from other businesses shall be rejected. The purchase, contract or expenditure of funds shall be awarded to the lowest responsible bidder among the small businesses, considering conformity with specifications and terms, in accordance with the authority's purchasing guidelines.

4. A portion of small business set-asides shall be set aside in turn as exclusively as possible, to small businesses owned or controlled by

minority business concerns, and such businesses shall constitute not less than twenty-five percent of the successful bidders under this title.

5. If the total number of small businesses responding to the invitation to bid and considered capable of meeting the specifications and terms of the invitation to bid is less than three, or if the general manager determines that acceptance of the best bid will result in the payment of an unreasonable price, the general manager shall reject all bids and withdraw the designation of small business set-aside.

6. If the general manager withdraws the designation of small business set-aside, the authority shall notify the bidders of the reason why the bids were rejected. Invitations to bid containing the same or rewritten specifications and terms shall then be re-issued without the designation of small business set-aside.

§ 3. This act shall take effect immediately.