STATE OF NEW YORK

7534

2021-2022 Regular Sessions

IN SENATE

November 19, 2021

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general municipal law, in relation to the awarding of certain purchase contracts

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

Section 1. Subdivision 1 of section 103 of the general municipal law, as amended by section 1 of chapter 2 of the laws of 2012, is amended to read as follows:

1. **(a)** Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section, provided, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section one hundred sixty-three of the state finance law, to a responsive and responsible bidder or offerer in the manner provided by this section except that in a political subdivision other than a city with a population of one million inhabitants or more or any district, board or agency with jurisdiction exclusively therein the use of best value for awarding a purchase contract or purchase contracts must be authorized by local law or, in the case of a district corporation, school district or board of cooperative educational services, by rule, regulation or resolution adopted at

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

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a public meeting**, provided further, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded to an otherwise qualified bidder who fulfills one or more of the values based procurement standards pursuant to paragraph (b) of this subdivision and the contract may be given preference over other bidders provided, however, that the cost included in the bid is not more than ten percent greater than the cost included in a bid by the lowest responsible bidder and provided further that the bidder provides all relevant supply chain data in its bid to the appropriate officer, board or agency, updated annually and upon changes, and that the appropriate officer, board or agency shall make this data publicly available without the need for a freedom of information law request, excepting data prohibited by state law**. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his or her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. For purposes of this section, "sealed bids" and "sealed offers", as that term applies to purchase contracts, (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) shall include bids and offers submitted in an electronic format including submission of the statement of non-collusion required by section one hundred three-d of this article, provided that the governing board of the political subdivision or district, by resolution, has authorized the receipt of bids and offers in such format. Submission in electronic format may, for technology contracts only, be required as the sole method for the submission of bids and offers. Bids and offers submitted in an electronic format shall be transmitted by bidders and offerers to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids and offers shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must [~~(a)~~] **(i)** document the time and date of receipt of each bid and offer received electronically; [~~(b)~~] **(ii)** authenticate the identity of the

sender; [~~(c)~~] (iii) ensure the security of the information transmitted; and [~~(d)~~] (iv) ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or offers. The timely submission of an electronic bid or offer in compliance with instructions provided for such submission in the advertisement for bids or offers and/or the specifications shall be the responsibility solely of each bidder or offerer or prospective bidder or offerer. No political subdivision or district therein shall incur any liability from delays or interruptions in the receiving device designated for the submission and receipt of electronic bids and offers.

(b) Supplier data shall be submitted at the time of bid, to the best of the bidder's ability, updated at point of contract, and then updated annually and upon changes. Any contractor shall submit updated supplier data. Such data required pursuant to this paragraph shall include the name and address of each supplier, distributor, processor, and producer involved in the provision of the products that the bidder will supply.

(c) For the purposes of this subdivision, "values based procurement standards" shall mean procurement criteria that is based on:

(i) local economies. Preference shall be given to New York state or regional suppliers that are sourcing food products in which fifty-one percent of the raw agricultural materials have been grown, harvested, processed and manufactured from within the state or region (within two hundred fifty miles for produce and five hundred miles for animal products); or

(ii) environmental sustainability. Preference shall be given to producers that adopt practices that contribute to improved soil health and increased carbon sequestration and storage, and that achieve net short-term and long-term greenhouse gas benefits. Such practices shall include those recommended by the United States department of agriculture natural resources conservation service or their equivalent, that will:

(A) achieve the reduction or elimination of synthetic pesticides and fertilizers through use of precision agriculture, integrated pest management, and/or advanced nutrient management;

(B) avoid the misuse or routine use of hormones or antibiotics for growth promotion or ongoing disease prevention;

(C) preserve and rebuild soil quality through use of soil health practices, including but not limited to planting cover crops, adopting no-till and reduced tillage, increasing crop rotations and intercropping, and planting perennial crops, to improve the function and resilience of soils;

(D) protect and enhance wildlife habitats and biodiversity;

(E) avoid contributing to water quality impairment and avoid contributing to deterioration of local air quality;

(F) reduce greenhouse gas emissions attributable to livestock through use of feed management, prescribed grazing, amendments for treatment of agricultural waste, and manure management; and

(G) reduce on-farm energy and water consumption, food waste and greenhouse gas emissions; or

(iii) racial equity. Preference shall be given to minority and women-owned business enterprises as defined in article fifteen-a of the executive law.

(iv) valued workforce. In order to avoid labor unrest and thereby secure best value, preference shall be given to suppliers who: respect and protect workers' rights to freedom of association, to organize a union, and to bargain collectively free from retaliation; as evidenced

by a union contract or agreeing to enter into a labor peace agreement with a bona fide labor union upon request by that union; or are a worker-owned cooperative; or

(v) valued agricultural workforce. Preference shall be given to suppliers who pay farmers a fair price, using United States department of agriculture pricing standards, for the products they supply that covers their actual cost of production and fair remuneration for their management and labor; or

(vi) animal welfare. Preference shall be given to producers who provide more humane care for farmed animals by prohibiting intensive confinement (e.g. caging, crating or tethering), providing enough space and environmental enrichments to allow animals to carry out their natural behaviors, using pain control as needed when carrying out physical alterations, utilizing responsible, therapeutic antibiotic use, and requiring humane handling and slaughter, as demonstrated by an independent United States department of agriculture recognized animal welfare certification program with regular, third-party on-farm audits assessing a producer's compliance with one hundred percent of the program's welfare standards; or

(vii) nutrition. Preference shall be given to foods that promote health and well-being, comprised of namely whole grains, fresh and minimally-processed fruits and vegetables, essential fats (including nuts, seeds and fish), and whole plant-based and lean proteins so as to decrease sodium, added sugars, artificial additives, and saturated, hydrogenated, and trans fats.

§ 2. Subdivision 1 of section 103 of the general municipal law, as amended by section 2 of chapter 2 of the laws of 2012, is amended to read as follows:

1. (a) Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section, provided, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section one hundred sixty-three of the state finance law, to a responsive and responsible bidder or offerer in the manner provided by this section except that in a political subdivision other than a city with a population of one million inhabitants or more or any district, board or agency with jurisdiction exclusively therein the use of best value of awarding a purchase contract or purchase contracts must be authorized by local law or, in the case of a district corporation, school district or board of cooperative educational services, by rule, regulation or resolution adopted at a public meeting, provided further, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded to an otherwise qualified bidder who fulfills one or more of the values based procurement standards pursuant to paragraph (b) of this subdivision and the

contract may be given preference over other bidders provided, however that the cost included in the bid is not more than ten percent greater than the cost included in a bid by the lowest responsible bidder and provided further that the bidder provides all relevant supply chain data in its bid to the appropriate officer, board or agency, updated annually and upon changes, and that the appropriate officer, board or agency shall make this data publicly available without the need for a freedom of information law request, excepting data prohibited by state law. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the low bid or best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his, her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section.

(b) Supplier data shall be submitted at the time of bid, to the best of the bidder's ability, updated at point of contract, and then updated annually and upon changes. Any contractor shall submit updated supplier data. Such data required pursuant to this paragraph shall include the name and address of each supplier, distributor, processor, and producer involved in the provision of the products that the bidder will supply.

(c) For the purposes of this subdivision, "values based procurement standards" shall mean procurement criteria that is based on:

(i) local economies. Preference shall be given to New York state or regional suppliers that are sourcing food products in which fifty-one percent of the raw agricultural materials have been grown, harvested, processed and manufactured from within the state or region (within two hundred fifty miles for produce and five hundred miles for animal products); or

(ii) environmental sustainability. Preference shall be given to producers that adopt practices that contribute to improved soil health and increased carbon sequestration and storage, and that achieve net short-term and long-term greenhouse gas benefits. These practices include those recommended by the United States department of agriculture natural resources conservation service or their equivalent, that will:

(A) achieve the reduction or elimination of synthetic pesticides and fertilizers through use of precision agriculture, integrated pest management, and/or advanced nutrient management;

(B) avoid the misuse or routine use of hormones or antibiotics for growth promotion or ongoing disease prevention;

(C) preserve and rebuild soil quality through use of soil health practices, including but not limited to planting cover crops, adopting no-till and reduced tillage, increasing crop rotations and intercropping, and planting perennial crops, to improve the function and resilience of soils;

(D) protect and enhance wildlife habitats and biodiversity;

(E) avoid contributing to water quality impairment and avoid contributing to deterioration of local air quality;

(F) reduce greenhouse gas emissions attributable to livestock through use of feed management, prescribed grazing, amendments for treatment of agricultural waste, and manure management; and

(G) reduce on-farm energy and water consumption, food waste and greenhouse gas emissions; or

(iii) racial equity. Preference shall be given to minority and women-owned business enterprises as defined in article fifteen-a of the executive law

(iv) valued workforce. In order to avoid labor unrest and thereby secure best value, preference shall be given to suppliers who: respect and protect workers' rights to freedom of association, to organize a union, and to bargain collectively free from retaliation; as evidenced by a union contract or agreeing to enter into a labor peace agreement with a bona fide labor union upon request by that union; or are a worker-owned cooperative; or

(v) valued agricultural workforce. Preference shall be given to suppliers who pay farmers a fair price, using United States department of agriculture pricing standards, for the products they supply that covers their actual cost of production and fair remuneration for their management and labor; or

(vi) animal welfare. Preference shall be given to producers who provide more humane care for farmed animals by prohibiting intensive confinement (e.g. caging, crating or tethering), providing enough space and environmental enrichments to allow animals to carry out their natural behaviors, using pain control as needed when carrying out physical alterations, utilizing responsible, therapeutic antibiotic use, and requiring humane handling and slaughter, as demonstrated by an independent United States department of agriculture recognized animal welfare certification program with regular, third-party on-farm audits assessing a producer's compliance with one hundred percent of the program's welfare standards; or

(vii) nutrition. Preference shall be given to foods that promote health and well-being, comprised of namely whole grains, fresh and minimally-processed fruits and vegetables, essential fats (including nuts, seeds and fish), and whole plant-based and lean proteins so as to decrease sodium, added sugars, artificial additives, and saturated, hydrogenated, and trans fats.

§ 3. This act shall take effect immediately; provided, however, that the amendments to subdivision 1 of section 103 of the general municipal law made by section one of this act shall be subject to the expiration and reversion of such subdivision when upon such date the provisions of section two of this act shall take effect.