

STATE OF NEW YORK

6325

2023-2024 Regular Sessions

IN SENATE

April 14, 2023

Introduced by Sen. MATTERA -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts

AN ACT to amend the state finance law, the public authorities law and the executive law, in relation to requiring the purchase of personal protective equipment and medical supplies produced or manufactured in the state of New York in certain circumstances

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

1 Section 1. Section 148 of the state finance law is amended by adding a
2 new subdivision 6 to read as follows:

3 6. Notwithstanding any contrary provision of this section or any other
4 law, rule or regulation, the provisions of this section shall not apply
5 to contracts involving personal protective equipment and medical
6 supplies during the existence of a state disaster emergency under
7 circumstances described in section one hundred forty-eight-a of this
8 article requiring the purchase of personal protective equipment and
9 medical supplies produced or manufactured in New York.

10 § 2. The state finance law is amended by adding a new section 148-a to
11 read as follows:

12 § 148-a. Contracts involving personal protective equipment and medical
13 supplies; state disaster emergency. 1. Notwithstanding any contrary
14 provision of section one hundred forty-eight of this article or any
15 other law, rule or regulation, during the existence of a state disaster
16 emergency, as defined in paragraph (a) of subdivision two of this
17 section, all contracts over fifty thousand dollars in value made and
18 awarded by any department or agency of the state for the purchase of
19 personal protective equipment or medical supplies shall require that the
20 personal protective equipment or medical supply items be produced or
21 made in whole or substantial part in the state of New York.

22 2. For purposes of this section:

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

LBD05154-01-3

1 (a) "state disaster emergency" shall have the same meaning as defined
2 in paragraph b of subdivision two of section twenty of the executive
3 law, provided, however, such disasters shall be limited to those involv-
4 ing an epidemic, pandemic or similar disease outbreak.

5 (b) "personal protective equipment" means all equipment worn to mini-
6 mize exposure to medical hazards, including gloves, masks, face shields,
7 eye protection, respirators, medical hair and shoe coverings, and
8 disposable gowns and aprons.

9 (c) "medical supplies" means materials necessary to respond to health
10 emergencies or pandemics, including and without limitation ventilators,
11 medical test kits, and vaccines.

12 3. The provisions of this section shall not apply if the head of the
13 department or agency purchasing the personal protective equipment or
14 medical supplies, in his or her sole discretion, determines that such
15 provisions would not be in the public interest; that obtaining such
16 personal protective equipment or medical supplies produced or made in
17 the state of New York would increase the cost of the contract by an
18 unreasonable amount; that such personal protective equipment or medical
19 supplies cannot be produced or made in the state of New York in suffi-
20 cient and reasonably available quantities and of satisfactory quality or
21 design to meet the department's or agency's requirements; or that
22 purchasing personal protective equipment or medical supplies produced or
23 manufactured outside of the state of New York is necessary to avoid a
24 delay in the delivery of critical services that could compromise the
25 public welfare. In the event a New York state source is not able to
26 supply personal protective equipment or medical supply items, any other
27 personal protective equipment or medical supply items produced or made
28 in whole or substantial part in the United States may be utilized to
29 satisfy the requirements of this subdivision.

30 4. Nothing in this section is intended to contravene any existing
31 treaties, laws, trade agreements, or regulations of the United States or
32 subsequent trade agreements entered into between any foreign countries
33 and the state or the United States.

34 5. Subject to the provisions of this section, the department of
35 economic development, in consultation with the office of general
36 services and the division of the budget, shall be authorized to estab-
37 lish rules and regulations for the effective administration of this
38 section.

39 § 3. Section 2878-c of the public authorities law is amended by adding
40 a new subdivision 6 to read as follows:

41 6. Notwithstanding any contrary provision of this section or any other
42 law, rule or regulation, the provisions of this section shall not apply
43 to contracts involving personal protective equipment and medical
44 supplies during the existence of a state disaster emergency under
45 circumstances described in section twenty-eight hundred seventy-eight-cc
46 of this article requiring the purchase of personal protective equipment
47 and medical supplies produced or manufactured in New York.

48 § 4. The public authorities law is amended by adding a new subdivision
49 2878-cc to read as follows:

50 § 2878-cc. Contracts involving personal protective equipment and
51 medical supplies; state disaster emergency. 1. Notwithstanding any
52 contrary provision of section twenty-eight hundred seventy-eight-c of
53 this article or any other law, rule or regulation, during the existence
54 of a state disaster emergency, as defined in paragraph (a) of subdivi-
55 sion two of this section, all contracts over fifty thousand dollars in
56 value made and awarded by any authority of the state for the purchase of

1 personal protective equipment or medical supplies shall require that the
2 personal protective equipment or medical supply items be produced or
3 made in whole or substantial part in the state of New York.

4 2. For purposes of this section:

5 (a) "state disaster emergency" shall have the same meaning as defined
6 in paragraph b of subdivision two of section twenty of the executive
7 law, provided, however, such disasters shall be limited to those involv-
8 ing an epidemic, pandemic or similar disease outbreak.

9 (b) "personal protective equipment" means all equipment worn to mini-
10 imize exposure to medical hazards, including gloves, masks, face shields,
11 eye protection, respirators, medical hair and shoe coverings, and
12 disposable gowns and aprons.

13 (c) "medical supplies" means materials necessary to respond to health
14 emergencies or pandemics, including and without limitation ventilators,
15 medical test kits, and vaccines.

16 3. The provisions of this section shall not apply if the head of the
17 authority purchasing the personal protective equipment or medical
18 supplies, in his or her sole discretion, determines that such provisions
19 would not be in the public interest; that obtaining such personal
20 protective equipment or medical supplies produced or made in the state
21 of New York would increase the cost of the contract by an unreasonable
22 amount; that such personal protective equipment or medical supplies
23 cannot be produced or made in the state of New York in sufficient and
24 reasonably available quantities and of satisfactory quality or design to
25 meet the authority's requirements; or that purchasing personal protec-
26 tive equipment or medical supplies produced or manufactured outside of
27 the state of New York is necessary to avoid a delay in the delivery of
28 critical services that could compromise the public welfare. In the event
29 a New York state source is not able to supply personal protective equip-
30 ment or medical supply items, any other personal protective equipment or
31 medical supply items produced or made in whole or substantial part in
32 the United States may be utilized to satisfy the requirements of this
33 subdivision.

34 4. Nothing in this section is intended to contravene any existing
35 treaties, laws, trade agreements, or regulations of the United States or
36 subsequent trade agreements entered into between any foreign countries
37 and the state or the United States.

38 5. Subject to the provisions of this section, the department of
39 economic development, in consultation with the office of general
40 services and the division of the budget, shall be authorized to estab-
41 lish rules and regulations for the effective administration of this
42 section.

43 § 5. Section 28 of the executive law is amended by adding a new subdi-
44 vision 2-a to read as follows:

45 2-a. (a) Upon declaration of a disaster emergency involving an epidem-
46 ic, pandemic or similar disease outbreak, the governor or the governor's
47 designee shall:

48 (i) notify the heads of every department or agency that is subject to
49 the purchasing requirements of article nine of the state finance law
50 that such emergency exists and that all contracts over fifty thousand
51 dollars in value made and awarded by any such department or agency for
52 the purchase of personal protective equipment or medical supplies shall
53 require that such personal protective equipment or medical supply items
54 be produced or made in whole or substantial part in the state of New
55 York pursuant to section one hundred forty-eight-a of the state finance
56 law except as otherwise provided therein; and

1 (ii) notify the heads of every state agency subject to the require-
2 ments of title four of article nine of the public authorities law that
3 such emergency exists and that all contracts over fifty thousand dollars
4 in value made and awarded by any such state authority for the purchase
5 of personal protective equipment or medical supplies shall require that
6 the personal protective equipment or medical supply items be produced or
7 made in whole or substantial part in the state of New York pursuant to
8 section twenty-eight hundred seventy-eight-cc of the public authorities
9 law except as otherwise provided therein.

10 (b) The governor shall take appropriate actions pursuant to the emer-
11 gency preparedness plan approved pursuant to subdivision three-a of
12 section twenty-two of this article.

13 § 6. Section 22 of the executive law is amended by adding a new subdi-
14 vision 3-a to read as follows:

15 3-a. a. Such plans shall, in addition to the requirements set forth in
16 subdivision three of this section, also include measures to facilitate
17 the production and/or manufacture in New York state of personal protec-
18 tive equipment and medical supplies as defined in paragraph b of this
19 subdivision, and such other provisions as are necessary to satisfy the
20 applicable procurement requirements of section one hundred forty-eight-a
21 of the state finance law and section twenty-eight hundred seventy-eight-
22 cc of the public authorities law.

23 b. For the purposes of this section:

24 (i) "personal protective equipment" means all equipment worn to mini-
25 imize exposure to medical hazards, including gloves, masks, face shields,
26 eye protection, respirators, medical hair and shoe coverings, and
27 disposable gowns and aprons.

28 (ii) "medical supplies" means materials necessary to respond to health
29 emergencies or pandemics, including and without limitation ventilators,
30 medical test kits, and vaccines.

31 § 7. This act shall take effect on the sixtieth day after it shall
32 have become a law and shall apply to any state contracting opportunities
33 advertised on or after such date and shall exclude contracts for which
34 an invitation for bid, request for proposal, or similar solicitation has
35 been issued prior to such effective date and such contracts shall be
36 awarded pursuant to the provisions of law in effect at the time of issu-
37 ance.