STATE OF NEW YORK

3273

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. E. BROWN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the purchase or lease of zero emission vehicles for state-owned vehicle fleets

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

Section 1. Subdivision 11 of section 201-a of the executive law, as added by chapter 836 of the laws of 2022, is amended to read as follows:

11. a. **(i)** The commissioner of general services shall include requirements in any procurement for the manufacturing or retrofitting of zero emission vehicles and charging or fueling infrastructure that the components and parts used or supplied in the performance of the contract or any subcontract thereto shall be produced [~~or made in whole or substantial part~~] in the United States, its territories or possessions and that final assembly of the zero emission vehicles and charging or fueling infrastructure shall occur in the United States, its territories or possessions**; except as otherwise provided herein. As used in this subdivision, the term "produced in the United States" shall have the same meaning as such term is defined in section 70911 of the "Build America, Buy America Act" (Pub. L. 117-58, div. G, title IX, Nov. 15, 2021, 135 Stat. 1294, 1297)**.

(ii) Notwithstanding any contrary provision of subparagraph (i) of this paragraph, no requirement that final assembly of the zero emission vehicles and charging or fueling infrastructure shall occur in the United States, its territories or possessions shall be included in any procurement contract until at least one year shall have elapsed following the effective date of this subdivision.

b. **(i)** The commissioner of general services, in consultation with the New York state energy research and development authority may waive the contracting requirements set forth in paragraph a of this subdivision if the commissioner of general services determines that the requirements

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

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would not be in the public interest, would result in unreasonable costs, or that obtaining such zero emission vehicles and charging or fueling infrastructure components and parts in the United States would increase the cost of a contract for zero emission vehicles and charging or fueling infrastructure by an unreasonable amount, or such zero emission vehicles and charging or fueling infrastructure components and parts cannot be produced, made, or assembled in the United States in sufficient and reasonably available quantities or of satisfactory quality. Such determination must be made on an annual basis no later than December thirty-first after providing notice and an opportunity for public comment, and be made publicly available, in writing, on the office of general services' website with a detailed explanation of the findings leading to such determination. If the commissioner of general services has issued determinations for three consecutive years that no such waiver is warranted pursuant to this paragraph, then the commissioner of general services shall no longer be required to provide the annual determination required by this paragraph.

(ii) The contracting requirements set forth in paragraph a of this subdivision will result in "unreasonable costs" or increase the cost of the contract by an "unreasonable amount" for the purposes of subparagraph (i) of this paragraph if the inclusion of the zero emission vehicles and charging or fueling infrastructure produced in the United States will increase the costs of the overall contract by more than twenty-five percent; provided, however, that labor costs involved in the final assembly of any such zero emission vehicles and charging or fueling infrastructure shall not be included in any calculation made pursuant to this subparagraph.

c. Notwithstanding any contrary provision of subparagraph (i) of paragraph b of this subdivision, the contracting requirements of paragraph a of this subdivision shall not apply to any components and parts of zero emission vehicles and charging or fueling infrastructure that are subject to a waiver issued by a federal agency pursuant to subsection (b) of section 70914 of the Build America, Buy America Act (Pub. L. 117-58; 135 Stat. 1294, 1298), subsection (g) of section 313 of title 23 of the United States Code, as amended by Public Law 117-58 (135 Stat. 595-596), or any similar exemption from the provisions of any "Buy America law" as defined in subsection (a) of section 70916 of the Build America, Buy America Act, nor shall any such components or parts be subject to a determination by the commissioner of general services pursuant to subparagraph (i) of paragraph b of this subdivision while a waiver from federal domestic procurement requirements is in effect with respect thereto.

§ 2. This act shall take effect immediately.