

STATE OF NEW YORK

7264--A

Cal. No. 203

2023-2024 Regular Sessions

IN ASSEMBLY

May 16, 2023

Introduced by M. of A. PEOPLES-STOKES, THIELE, ANDERSON, ZINERMAN, L. ROSENTHAL, JACOBSON, LUNSFORD, SHRESTHA, SHIMSKY, GUNTHER, WEPRIN, COLTON, RAGA, KELLES, SIMON, EPSTEIN, SEAWRIGHT, HEVESI, McDONALD, SOLAGES, SANTABARBARA, BICHOTTE HERMELYN, FORREST, BRONSON, LEVENBERG, CLARK, LUCAS, PAULIN, STIRPE, JACKSON -- read once and referred to the Committee on Local Governments -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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

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

1 Section 1. Subdivision 1 of section 103 of the general municipal law,
2 as amended by chapter 668 of the laws of 2023, is amended to read as
3 follows:
4 1. (a) Except as otherwise expressly provided by an act of the legis-
5 lature or by a local law adopted prior to September first, nineteen
6 hundred fifty-three, all contracts for public work involving an expendi-
7 ture of more than thirty-five thousand dollars and all purchase
8 contracts involving an expenditure of more than twenty thousand dollars,
9 shall be awarded by the appropriate officer, board or agency of a poli-
10 tical subdivision or of any district therein including but not limited
11 to a soil conservation district to the lowest responsible bidder
12 furnishing the required security after advertisement for sealed bids in
13 the manner provided by this section~~[-]~~; provided, however, that purchase
14 contracts (including contracts for service work, but excluding any
15 purchase contracts necessary for the completion of a public works
16 contract pursuant to article eight of the labor law) may be awarded on
17 the basis of best value, as defined in section one hundred sixty-three
18 of the state finance law, to a responsive and responsible bidder or
19 offerer in the manner provided by this section except that in a poli-

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

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1 tical subdivision other than a city with a population of one million
2 inhabitants or more or any district, board or agency with jurisdiction
3 exclusively therein the use of best value for awarding a purchase
4 contract or purchase contracts must be authorized by local law or, in
5 the case of a district corporation, school district or board of cooper-
6 ative educational services, by rule, regulation or resolution adopted at
7 a public meeting; and provided, further, that food purchase contracts
8 (including contracts for food service work, but excluding any purchase
9 contract necessary for the completion of a public works contract pursu-
10 ant to article eight of the labor law) may be awarded to an otherwise
11 qualified bidder who fulfills one or more of the values based procure-
12 ment standards pursuant to paragraph (c) of this subdivision and may be
13 given preference over other bidders, provided, however, that the cost
14 included in the bid is not more than ten percent greater than the cost
15 included in a bid by the lowest responsible bidder. Provided further
16 that pursuant to paragraph (b) of this subdivision, all bidders on food
17 purchase contracts shall provide relevant supply chain data in its bid
18 to the appropriate officer, board or agency. The appropriate officer,
19 board or agency shall make such data publicly available on the entities'
20 respective websites, excepting data not subject to disclosure pursuant
21 to article six of the public officers law. In any case where a respon-
22 sible bidder's or responsible offerer's gross price is reducible by an
23 allowance for the value of used machinery, equipment, apparatus or tools
24 to be traded in by a political subdivision, the gross price shall be
25 reduced by the amount of such allowance, for the purpose of determining
26 the best value. In cases where two or more responsible bidders furnishing
27 the required security submit identical bids as to price, such officer,
28 board or agency may award the contract to any of such bidders. Such
29 officer, board or agency may, in ~~[his or her or its]~~ their discretion,
30 reject all bids or offers and readvertise for new bids or offers in the
31 manner provided by this section. In determining whether a purchase is an
32 expenditure within the discretionary threshold amounts established by
33 this subdivision, the officer, board or agency of a political subdivision
34 or of any district therein shall consider the reasonably expected
35 aggregate amount of all purchases of the same commodities, services or
36 technology to be made within the twelve-month period commencing on the
37 date of purchase. Purchases of commodities, services or technology
38 shall not be artificially divided for the purpose of satisfying the
39 discretionary buying thresholds established by this subdivision. A
40 change to or a renewal of a discretionary purchase shall not be permitted
41 if the change or renewal would bring the reasonably expected aggregate
42 amount of all purchases of the same commodities, services or technology
43 from the same provider within the twelve-month period commencing
44 on the date of the first purchase to an amount greater than the discretionary
45 buying threshold amount. For purposes of this section, "sealed
46 bids" and "sealed offers", as that term applies to purchase contracts,
47 (including contracts for service work, but excluding any purchase
48 contracts necessary for the completion of a public works contract pursuant
49 to article eight of the labor law) shall include bids and offers
50 submitted in an electronic format including submission of the statement
51 of non-collusion required by section one hundred three-d of this article,
52 provided that the governing board of the political subdivision or
53 district, by resolution, has authorized the receipt of bids and offers
54 in such format. Submission in electronic format may, for technology
55 contracts only, be required as the sole method for the submission of
56 bids and offers. Provided however, the appropriate officer, board or

1 agency of a city with a population of one million inhabitants or more,
2 or any district, board or agency with jurisdiction exclusively within
3 such city, may authorize or require bids and offers for any contract to
4 be submitted in an electronic format. Bids and offers submitted in an
5 electronic format shall be transmitted by bidders and offerers to the
6 receiving device designated by the political subdivision or district.
7 Any method used to receive electronic bids and offers shall comply with
8 article three of the state technology law, and any rules and regulations
9 promulgated and guidelines developed thereunder and, at a minimum, must
10 ~~[(a)]~~ (i) document the time and date of receipt of each bid and offer
11 received electronically; ~~[(b)]~~ (ii) authenticate the identity of the
12 sender; ~~[(c)]~~ (iii) ensure the security of the information transmitted;
13 and ~~[(d)]~~ (iv) ensure the confidentiality of the bid or offer until the
14 time and date established for the opening of bids or offers. The timely
15 submission of an electronic bid or offer in compliance with instructions
16 provided for such submission in the advertisement for bids or offers
17 and/or the specifications shall be the responsibility solely of each
18 bidder or offerer or prospective bidder or offerer. No political subdivi-
19 sion or district therein shall incur any liability from delays of or
20 interruptions in the receiving device designated for the submission and
21 receipt of electronic bids and offers.

22 (b) (i) All supplier data, including supplier data from subcontractors, shall be submitted to the entity issuing the request for proposals at the time of bid, to the best of the bidder's ability, and updated at point of contract execution. Such data shall also be updated annually and upon any changes to supplier information. 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.

30 (ii) The provisions of this paragraph shall apply to all bidders' food purchase contracts and bid proposals.

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

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

40 (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:

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

47 (B) avoid the use of hormones or antibiotics except for treatment of a sick animal or for disease control, where disease control is defined as use where it can be shown that a particular disease or infection is present on the premises where the animal is kept;

51 (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;

55 (D) protect and enhance wildlife habitats and biodiversity;

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

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

6 (G) reduce on-farm energy and water consumption, food waste and green-
7 house gas emissions; or

8 (iii) racial equity. Preference shall be given to minority and women-
9 owned business enterprises, as defined by article fifteen-A of the exec-
10 utive law, or socially disadvantaged farms. For the purposes of this
11 subparagraph, "socially disadvantaged" shall mean individuals who have
12 been subject to discrimination by virtue of their membership of a
13 particular group which may include, but is not limited to, Black or
14 African American, American Indian or Alaska Native, Hispanic or Latino,
15 and Asian or Pacific Islander; or

16 (iv) valued workforce. Preference shall be given to suppliers who
17 respect and protect workers' rights, regardless of immigration status,
18 to organize a union, to affiliate with worker centers and alternative
19 forms of worker representation and to bargain collectively free from
20 retaliation and interference; as evidenced by agreeing to enter into a
21 labor peace agreement with a bona fide labor union; having worker-led
22 workplace health and safety committees; or being a worker-owned cooper-
23 ative; or

24 (v) valued agricultural sector. Preference shall be given to suppliers
25 who pay farmers a fair price, using United States department of agricul-
26 ture pricing standards, for the products they supply that covers their
27 actual cost of production; and to suppliers who pay fair remuneration to
28 farmers for their management and labor; or

29 (vi) animal welfare. Preference shall be given to producers who
30 provide more humane care for farmed animals by providing enough space
31 and environmental enrichments to allow animals to carry out their
32 natural behaviors, using pain control as needed when carrying out phys-
33 ical alterations, utilizing responsible, therapeutic antibiotic use, and
34 requiring humane handling and slaughter, as demonstrated by enrollment
35 in an independent United States department of agriculture recognized
36 animal welfare certification program with regular, third-party on-farm
37 audits assessing a producer's compliance with one hundred percent of the
38 program's welfare standards; or

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

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

48 1. (a) Except as otherwise expressly provided by an act of the legis-
49 lature or by a local law adopted prior to September first, nineteen
50 hundred fifty-three, all contracts for public work involving an expendi-
51 ture of more than thirty-five thousand dollars and all purchase
52 contracts involving an expenditure of more than twenty thousand dollars,
53 shall be awarded by the appropriate officer, board or agency of a poli-
54 tical subdivision or of any district therein including but not limited
55 to a soil conservation district to the lowest responsible bidder
56 furnishing the required security after advertisement for sealed bids in

1 the manner provided by this section[7]; provided, however, that purchase
2 contracts (including contracts for service work, but excluding any
3 purchase contracts necessary for the completion of a public works
4 contract pursuant to article eight of the labor law) may be awarded on
5 the basis of best value, as defined in section one hundred sixty-three
6 of the state finance law, to a responsive and responsible bidder or
7 offerer in the manner provided by this section except that in a poli-
8 tical subdivision other than a city with a population of one million
9 inhabitants or more or any district, board or agency with jurisdiction
10 exclusively therein the use of best value of awarding a purchase
11 contract or purchase contracts must be authorized by local law or, in
12 the case of a district corporation, school district or board of cooper-
13 ative educational services, by rule, regulation or resolution adopted at
14 a public meeting; and provided, further, that food purchase contracts
15 (including contracts for service work, but excluding any purchase
16 contract necessary for the completion of a public works contract pursu-
17 ant to article eight of the labor law) may be awarded to an otherwise
18 qualified bidder who fulfills one or more of the values based procure-
19 ment standards pursuant to paragraph (c) of this subdivision and may be
20 given preference over other bidders, provided, however, that the cost
21 included in the bid is not more than ten percent greater than the cost
22 included in a bid by the lowest responsible bidder. Provided further
23 that pursuant to paragraph (b) of this subdivision, all bidders shall
24 provide relevant supply chain data in its bid to the appropriate offi-
25 cer, board or agency. The appropriate officer, board or agency shall
26 make such data publicly available on the entities' respective websites,
27 excepting data not subject to disclosure pursuant to article six of the
28 public officers law. In determining whether a purchase is an expendi-
29 ture within the discretionary threshold amounts established by this
30 subdivision, the officer, board or agency of a political subdivision or
31 of any district therein shall consider the reasonably expected aggregate
32 amount of all purchases of the same commodities, services or technology
33 to be made within the twelve-month period commencing on the date of
34 purchase. Purchases of commodities, services or technology shall not be
35 artificially divided for the purpose of satisfying the discretionary
36 buying thresholds established by this subdivision. A change to or a
37 renewal of a discretionary purchase shall not be permitted if the change
38 or renewal would bring the reasonably expected aggregate amount of all
39 purchases of the same commodities, services or technology from the same
40 provider within the twelve-month period commencing on the date of the
41 first purchase to an amount greater than the discretionary buying thresh-
42 hold amount. In any case where a responsible bidder's or responsible
43 offerer's gross price is reducible by an allowance for the value of used
44 machinery, equipment, apparatus or tools to be traded in by a political
45 subdivision, the gross price shall be reduced by the amount of such
46 allowance, for the purpose of determining the low bid or best value. In
47 cases where two or more responsible bidders furnishing the required
48 security submit identical bids as to price, such officer, board or agen-
49 cy may award the contract to any of such bidders. Such officer, board or
50 agency may, in [~~his, her or its~~] their discretion, reject all bids or
51 offers and readvertise for new bids or offers in the manner provided by
52 this section.

53 (b) (i) All supplier data, including supplier data from subcontractors,
54 shall be submitted to the entity issuing the request for proposals
55 at the time of bid, to the best of the bidder's ability, and updated at
56 point of contract execution. Such data shall also be updated annually

1 and upon any changes to supplier information. Such data required pursu-
2 ant to this paragraph shall include the name and address of each suppli-
3 er, distributor, processor, and producer involved in the provision of
4 the products that the bidder will supply.

5 (ii) The provisions of this paragraph shall apply to all bidders' food
6 purchase contracts and bid proposals.

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

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

15 (ii) environmental sustainability. Preference shall be given to
16 producers that adopt practices that contribute to improved soil health
17 and increased carbon sequestration and storage, and that achieve net
18 short-term and long-term greenhouse gas benefits. Such practices shall:

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

22 (B) avoid the use of hormones or antibiotics except for treatment of a
23 sick animal or for disease control, where disease control is defined as
24 use where it can be shown that a particular disease or infection is
25 present on the premises where the animal is kept;

26 (C) preserve and rebuild soil quality through use of soil health prac-
27 tices, including but not limited to planting cover crops, adopting
28 no-till and reduced tillage, increasing crop rotations and intercrop-
29 ping, and planting perennial crops, to improve the function and resili-
30 ence of soils;

31 (D) protect and enhance wildlife habitats and biodiversity;

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

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

37 (G) reduce on-farm energy and water consumption, food waste and green-
38 house gas emissions; or

39 (iii) racial equity. Preference shall be given to minority and women-
40 owned business enterprises, as defined by article fifteen-A of the exec-
41 utive law, or socially disadvantaged farms. For the purposes of this
42 subparagraph, "socially disadvantaged" shall mean individuals who have
43 been subject to discrimination by virtue of their membership of a
44 particular group which may include, but is not limited to, Black or
45 African American, American Indian or Alaska Native, Hispanic or Latino,
46 and Asian or Pacific Islander; or

47 (iv) valued workforce. Preference shall be given to suppliers who
48 respect and protect workers' rights, regardless of immigration status,
49 to organize a union, to affiliate with worker centers and alternative
50 forms of worker representation and to bargain collectively free from
51 retaliation and interference; as evidenced by agreeing to enter into a
52 labor peace agreement with a bona fide labor union; having worker-led
53 workplace health and safety committees; or being a worker-owned cooper-
54 ative; or

55 (v) valued agricultural sector. Preference shall be given to suppliers
56 who pay farmers a fair price, using United States department of agricul-

1 ture pricing standards, for the products they supply that covers their
2 actual cost of production; and to suppliers who pay fair remuneration to
3 farmers for their management and labor; or

4 (vi) animal welfare. Preference shall be given to producers who
5 provide more humane care for farmed animals by providing enough space
6 and environmental enrichments to allow animals to carry out their
7 natural behaviors, using pain control as needed when carrying out phys-
8 ical alterations, utilizing responsible, therapeutic antibiotic use, and
9 requiring humane handling and slaughter, as demonstrated by enrollment
10 in an independent United States department of agriculture recognized
11 animal welfare certification program with regular, third-party on-farm
12 audits assessing a producer's compliance with one hundred percent of the
13 program's welfare standards; or

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

20 § 3. This act shall take effect immediately; provided, however that
21 the amendments to subdivision 1 of section 103 of the general municipal
22 law made by section one of this act shall be subject to the expiration
23 and reversion of such subdivision pursuant to subdivision (a) of section
24 41 of part X of chapter 62 of the laws of 2003, when upon such date the
25 provisions of section two of this act shall take effect.