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:

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

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

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

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

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

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

(b) "personal protective equipment" means all equipment worn to minimize exposure to medical hazards, including gloves, masks, face shields, eye protection, respirators, medical hair and shoe coverings, and disposable gowns and aprons.

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

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

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

5. Subject to the provisions of this section, the department of economic development, in consultation with the office of general services and the division of the budget, shall be authorized to establish rules and regulations for the effective administration of this section.

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

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

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

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

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

2. For purposes of this section:

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

(b) "personal protective equipment" means all equipment worn to minimize exposure to medical hazards, including gloves, masks, face shields, eye protection, respirators, medical hair and shoe coverings, and disposable gowns and aprons.

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

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

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

5. Subject to the provisions of this section, the department of economic development, in consultation with the office of general services and the division of the budget, shall be authorized to establish rules and regulations for the effective administration of this section.

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

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

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

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

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

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

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

b. For the purposes of this section:

(i) "personal protective equipment" means all equipment worn to minimize exposure to medical hazards, including gloves, masks, face shields, eye protection, respirators, medical hair and shoe coverings, and disposable gowns and aprons.

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

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