

STATE OF NEW YORK

6955

2023-2024 Regular Sessions

IN SENATE

May 16, 2023

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

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 section 1 of chapter 2 of the laws of 2012, is amended to
3 read as 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-
20 tical subdivision other than a city with a population of one million
21 inhabitants or more or any district, board or agency with jurisdiction
22 exclusively therein the use of best value for awarding a purchase
23 contract or purchase contracts must be authorized by local law or, in
24 the case of a district corporation, school district or board of cooper-
25 ative 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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1 a public meeting, provided further, however, that food 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 to
5 an otherwise qualified bidder who fulfills one or more of the values
6 based procurement standards pursuant to paragraph (c) of this subdivi-
7 sion and the contract may be given preference over other bidders
8 provided, however, that the cost included in the bid is not more than
9 ten percent greater than the cost included in a bid by the lowest
10 responsible bidder and provided further that all bidders (including
11 lowest responsible bidders that do not utilize the ten percent bid bene-
12 fit) provide all relevant supply chain data in its bid to the appropri-
13 ate officer, board or agency, updated annually and upon changes, and
14 that the appropriate officer, board or agency shall make this data
15 publicly available on the entities' respective websites without the need
16 for a freedom of information law request, excepting data not subject to
17 disclosure under the state freedom of information law pursuant to arti-
18 cle six of the public officers law. In any case where a responsible
19 bidder's or responsible offerer's gross price is reducible by an allow-
20 ance for the value of used machinery, equipment, apparatus or tools to
21 be traded in by a political subdivision, the gross price shall be
22 reduced by the amount of such allowance, for the purpose of determining
23 the best value. In cases where two or more responsible bidders furnishing
24 the required security submit identical bids as to price, such officer,
25 board or agency may award the contract to any of such bidders. Such
26 officer, board or agency may, in his or her or its discretion, reject
27 all bids or offers and readvertise for new bids or offers in the manner
28 provided by this section. In determining whether a purchase is an
29 expenditure within the discretionary threshold amounts established by
30 this subdivision, the officer, board or agency of a political subdivision
31 or of any district therein shall consider the reasonably expected
32 aggregate amount of all purchases of the same commodities, services or
33 technology to be made within the twelve-month period commencing on the
34 date of purchase. Purchases of commodities, services or technology
35 shall not be artificially divided for the purpose of satisfying the
36 discretionary buying thresholds established by this subdivision. A
37 change to or a renewal of a discretionary purchase shall not be permitted
38 if the change or renewal would bring the reasonably expected aggregate
39 amount of all purchases of the same commodities, services or technology
40 from the same provider within the twelve-month period commencing
41 on the date of the first purchase to an amount greater than the discretionary
42 buying threshold amount. For purposes of this section, "sealed
43 bids" and "sealed offers", as that term applies to purchase contracts,
44 (including contracts for service work, but excluding any purchase
45 contracts necessary for the completion of a public works contract pursuant
46 to article eight of the labor law) shall include bids and offers
47 submitted in an electronic format including submission of the statement
48 of non-collusion required by section one hundred three-d of this article,
49 provided that the governing board of the political subdivision or
50 district, by resolution, has authorized the receipt of bids and offers
51 in such format. Submission in electronic format may, for technology
52 contracts only, be required as the sole method for the submission of
53 bids and offers. Bids and offers submitted in an electronic format shall
54 be transmitted by bidders and offerers to the receiving device designated
55 by the political subdivision or district. Any method used to
56 receive electronic bids and offers shall comply with article three of

1 the state technology law, and any rules and regulations promulgated and
2 guidelines developed thereunder and, at a minimum, must [~~(a)~~] (i) docu-
3 ment the time and date of receipt of each bid and offer received elec-
4 tronically; [~~(b)~~] (ii) authenticate the identity of the sender; [~~(c)~~]
5 (iii) ensure the security of the information transmitted; and [~~(d)~~] (iv)
6 ensure the confidentiality of the bid or offer until the time and date
7 established for the opening of bids or offers. The timely submission of
8 an electronic bid or offer in compliance with instructions provided for
9 such submission in the advertisement for bids or offers and/or the spec-
10 ifications shall be the responsibility solely of each bidder or offerer
11 or prospective bidder or offerer. No political subdivision or district
12 therein shall incur any liability from delays of or interruptions in the
13 receiving device designated for the submission and receipt of electronic
14 bids and offers.

15 (b) All supplier data, including sourcing data from subcontractors,
16 shall be submitted to the entity sending out the request for proposals
17 at the time of bid, to the best of the bidder's ability, updated at
18 point of contract, and then updated annually and upon changes. All
19 contractors and subcontractors shall submit updated supplier data. Such
20 data required pursuant to this paragraph shall include the name and
21 address of each supplier, distributor, processor, and producer
22 involved in the provision of the products that the bidder will supply.
23 Sourcing data requirements shall apply to all food suppliers, not just
24 those applying to the values-based procurement criteria.

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

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

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

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

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

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

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

50 (E) avoid contributing to water quality impairment and avoid contrib-
51 uting to deterioration of local air quality;

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

55 (G) reduce on-farm energy and water consumption, food waste and green-
56 house 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, or socially disadvantaged farmers. For the purposes of this subdivision, "socially disadvantaged" shall mean individuals who have been subject to discrimination by virtue of their membership of a particular group which may include, but not be limited to Black or African American, American Indian or Alaska Native, Hispanic or Latino, and Asian or Pacific Islander; or

(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, to affiliate with worker centers and alternative forms of worker representation and to bargain collectively free from retaliation; as evidenced by agreeing to enter into a labor peace agreement with a bona fide labor union upon request by that union; have worker-led workplace health and safety committees; or are a worker-owned cooperative; or

(v) 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

(vi) 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

1 the case of a district corporation, school district or board of cooper-
2 ative educational services, by rule, regulation or resolution adopted at
3 a public meeting, provided further, however, that food purchase
4 contracts (including contracts for service work, but excluding any
5 purchase contracts necessary for the completion of a public works
6 contract pursuant to article eight of the labor law) may be awarded to
7 an otherwise qualified bidder who fulfills one or more of the values
8 based procurement standards pursuant to paragraph (c) of this subdivi-
9 sion and the contract may be given preference over other bidders
10 provided, however that the cost included in the bid is not more than ten
11 percent greater than the cost included in a bid by the lowest responsi-
12 ble bidder and provided further that all bidders (including lowest
13 responsible bidders that do not utilize the ten percent bid benefit)
14 provide all relevant supply chain data in its bid to the appropriate
15 officer, board or agency, updated annually and upon changes, and that
16 the appropriate officer, board or agency shall make this data publicly
17 available on the entities' respective websites without the need for a
18 freedom of information law request, excepting data not subject to
19 disclosure under the state freedom of information law pursuant to arti-
20 cle six of the public officers law. In determining whether a purchase
21 is an expenditure within the discretionary threshold amounts established
22 by this subdivision, the officer, board or agency of a political subdivi-
23 sion or of any district therein shall consider the reasonably expected
24 aggregate amount of all purchases of the same commodities, services or
25 technology to be made within the twelve-month period commencing on the
26 date of purchase. Purchases of commodities, services or technology shall
27 not be artificially divided for the purpose of satisfying the discre-
28 tionary buying thresholds established by this subdivision. A change to
29 or a renewal of a discretionary purchase shall not be permitted if the
30 change or renewal would bring the reasonably expected aggregate amount
31 of all purchases of the same commodities, services or technology from
32 the same provider within the twelve-month period commencing on the date
33 of the first purchase to an amount greater than the discretionary buying
34 threshold amount. In any case where a responsible bidder's or responsi-
35 ble offerer's gross price is reducible by an allowance for the value of
36 used machinery, equipment, apparatus or tools to be traded in by a poli-
37 tical subdivision, the gross price shall be reduced by the amount of
38 such allowance, for the purpose of determining the low bid or best
39 value. In cases where two or more responsible bidders furnishing the
40 required security submit identical bids as to price, such officer, board
41 or agency may award the contract to any of such bidders. Such officer,
42 board or agency may, in his, her or its discretion, reject all bids or
43 offers and readvertise for new bids or offers in the manner provided by
44 this section.

45 (b) All supplier data, including sourcing data from subcontractors,
46 shall be submitted to the entity sending out the request for proposals
47 at the time of bid, to the best of the bidder's ability, updated at
48 point of contract, and then updated annually and upon changes. All
49 contractors and subcontractors shall submit updated supplier data. Such
50 data required pursuant to this paragraph shall include the name and
51 address of each supplier, distributor, processor, and producer
52 involved in the provision of the products that the bidder will supply.
53 Sourcing data requirements shall apply to all food suppliers, not just
54 those applying to the values-based procurement criteria.

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

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

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

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

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

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

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

24 (E) avoid contributing to water quality impairment and avoid contrib-
25 uting to deterioration of local air quality;

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

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

31 (iii) racial equity. Preference shall be given to minority and women-
32 owned business enterprises as defined in article fifteen-A of the execu-
33 tive law, or socially disadvantaged farmers. For the purposes of this
34 subdivision, "socially disadvantaged" shall mean individuals who have
35 been subject to discrimination by virtue of their membership of a
36 particular group which may include, but not be limited to Black or Afri-
37 can American, American Indian or Alaska Native, Hispanic or Latino, and
38 Asian or Pacific Islander; or

39 (iv) valued workforce. In order to avoid labor unrest and thereby
40 secure best value, preference shall be given to suppliers who: respect
41 and protect workers' rights to freedom of association, to organize a
42 union, to affiliate with worker centers and alternative forms of worker
43 representation, and to bargain collectively free from retaliation; as
44 evidenced by agreeing to enter into a labor peace agreement with a bona
45 fide labor union upon request by that union; have worker-led workplace
46 health and safety committees; or are a worker-owned cooperative; or

47 (v) animal welfare. Preference shall be given to producers who provide
48 more humane care for farmed animals by prohibiting intensive confinement
49 (e.g. caging, crating or tethering), providing enough space and environ-
50 mental enrichments to allow animals to carry out their natural behav-
51 iors, using pain control as needed when carrying out physical alter-
52 ations, utilizing responsible, therapeutic antibiotic use, and requiring
53 humane handling and slaughter, as demonstrated by an independent United
54 States department of agriculture recognized animal welfare certification
55 program with regular, third-party on-farm audits assessing a producer's

1 compliance with one hundred percent of the program's welfare standards;
2 or

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

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