

# STATE OF NEW YORK

6955--A

2023-2024 Regular Sessions

## IN SENATE

May 16, 2023

Introduced by Sens. HINCHEY, BAILEY, COONEY, HARCKHAM, HOYLMAN-SIGAL, KRUEGER, MARTINS, MAY, PALUMBO, PARKER, ROLISON, RYAN, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts -- recommitted to the Committee on Procurement and Contracts in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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<sup>[7]</sup>; 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

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

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

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

21 (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.

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

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

24 (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

25 (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:

26 (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;

27 (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;

28 (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;

29 (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.