STATE OF NEW YORK

814

2023-2024 Regular Sessions

IN SENATE

January 6, 2023

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law, the general municipal law, the public authorities law and the highway law, in relation to awarding a contract for the purchase of rock salt or sodium chloride; and to amend a chapter of the laws of 2022 amending the state finance law, the general municipal law, the public authorities law and the highway law relating to enacting the New York state buy American salt act, as proposed in legislative bills numbers S. 9441 and A. 7919-A, in relation to the effectiveness thereof

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

Section 1. Section 162-a of the state finance law, as added by a chapter of the laws of 2022 amending the state finance law, the general municipal law, the public authorities law and the highway law relating to enacting the New York state buy American salt act, as proposed in legislative bills numbers S. 9441 and A. 7919-A, is amended to read as follows:

§ 162-a. The New York state buy American salt act. 1. Use of American materials. (a) Notwithstanding any other provision of law, [~~each~~] when soliciting a contract for the purchase [~~or procurement made by~~] of rock salt or sodium chloride, any department or agency of the state [~~shall contain a provision that the rock salt, or sodium chloride, used or supplied in the performance of the~~] may award such contract [~~or any subcontract thereto shall be~~] to the responsible and reliable bidder offering to supply rock salt or sodium chloride that is mined or hand harvested in the United States, and which offer is within ten percent of the lowest price or best value offer, rather than to the lowest responsible and reliable bidder.

(b) [~~For the purposes of section one hundred sixty-three of this article, no bidder shall be deemed to be the lowest responsible and reliable~~

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

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~~bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.~~

~~(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the head of such department or agency determines that:~~

~~(i) such requirement would not be in the public interest;~~

~~(ii) such requirement would result in unreasonable costs;~~

~~(iii) such materials and products cannot be produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or~~

~~(iv) obtaining such materials and products in the United States would increase the cost of the contract by an unreasonable amount.~~

~~(d)~~] If it has been determined by a court or federal or state agency that any person intentionally:

(i) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any rock salt, or sodium chloride product used in projects to which this section applies, sold in or shipped to the United States that was not mined or hand harvested in the United States; or

(ii) represented that any rock salt, or sodium chloride product procured in a contract to which this section applies that was not produced in the United States, was produced in the United States; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of this chapter.

[~~(e)~~] **(c)** This section shall be applied in a manner consistent with the state's obligations under any applicable international agreements pertaining to government procurement.

2. Definitions. For the purposes of this section, the following words shall have the following meanings unless specified otherwise:

(a) "Public agency" means a governmental entity as that term is defined in section one hundred thirty-nine-j of this chapter;

(b) "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

(c) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 2. Section 104-d of the general municipal law, as added by a chapter of the laws of 2022 amending the state finance law, the general municipal law, the public authorities law and the highway law relating to enacting the New York state buy American salt act, as proposed in legislative bills numbers S. 9441 and A. 7919-A, is amended to read as follows:

§ 104-d. The New York state buy American salt act. 1. Use of American materials. (a) Notwithstanding any other provision of law, [~~each~~] **when soliciting a** contract for **the** purchase [~~or procurement made by~~] **of rock salt or sodium chloride,** any department or agency of a political subdivision [~~shall contain a provision that the rock salt, or sodium chloride, used or supplied in the performance of the~~] **may award such** contract [~~or any subcontract thereto shall be~~] **to the responsible and reliable bidder offering to supply rock salt or sodium chloride that is** mined or hand harvested in the United States**, and which offer is within**

ten percent of the lowest price or best value offer, rather than to the lowest responsible and reliable bidder.

(b) [~~No bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.~~

~~(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the head of such department or agency determines that:~~

~~(i) such requirement would not be in the public interest;~~

~~(ii) such requirement would result in unreasonable costs;~~

~~(iii) such materials and products cannot be produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or~~

~~(iv) obtaining such materials and products in the United States would increase the cost of the contract by an unreasonable amount.~~

~~(d)~~] If it has been determined by a court or federal or state agency that any person intentionally:

(i) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any rock salt, or sodium chloride product used in projects to which this section applies, sold in or shipped to the United States that was not mined or hand harvested in the United States; or

(ii) represented that any rock salt, or sodium chloride product procured in a contract to which this section applies that was not produced in the United States, was produced in the United States; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of the state finance law.

[~~(e)~~] (c) This section shall be applied in a manner consistent with the state's obligations under any applicable international agreements pertaining to government procurement.

2. Definitions. For the purposes of this section, the following words shall have the following meanings unless specified otherwise:

(a) "Public agency" means a governmental entity as that term is defined in section one hundred thirty-nine-j of the state finance law;

(b) "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

(c) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 3. Section 2877-a of the public authorities law, as added by a chapter of the laws of 2022 amending the state finance law, the general municipal law, the public authorities law and the highway law relating to enacting the New York state buy American salt act, as proposed in legislative bills numbers S. 9441 and A. 7919-A, is amended to read as follows:

§ 2877-a. The New York state buy American salt act. 1. Use of American materials. (a) Notwithstanding any other provision of law, [~~each~~] when soliciting a contract for the purchase [~~or procurement made by~~] of rock salt or sodium chloride, any public authority [~~shall contain a provision that the rock salt, or sodium chloride, used or supplied in the performance of the~~] may award such contract [~~or any subcontract thereto shall~~

~~be~~] to the responsible and reliable bidder offering to supply rock salt or sodium chloride that is mined or hand harvested in the United States, and which offer is within ten percent of the lowest price or best value offer, rather than to the lowest responsible and reliable bidder.

(b) [~~No bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.~~

~~(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the head of such public authority determines that:~~

~~(i) such requirement would not be in the public interest;~~

~~(ii) such requirement would result in unreasonable costs;~~

~~(iii) such materials and products cannot be produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or~~

~~(iv) obtaining such materials and products in the United States would increase the cost of the contract by an unreasonable amount.~~

~~(d)~~] If it has been determined by a court or federal or state agency that any person intentionally:

(i) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any rock salt, or sodium chloride product used in projects to which this section applies, sold in or shipped to the United States that was not mined or hand harvested in the United States; or

(ii) represented that any rock salt, or sodium chloride product procured in a contract to which this section applies that was not produced in the United States, was produced in the United States; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of the state finance law.

[~~(e)~~] (c) This section shall be applied in a manner consistent with the state's obligations under any applicable international agreements pertaining to government procurement.

2. Definitions. For the purposes of this section, the following words shall have the following meanings unless specified otherwise:

(a) "Public authority" means a state, local or interstate authority as those terms are defined in section two of this chapter;

(b) "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

(c) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 4. Section 12-a of the highway law, as added by a chapter of the laws of 2022 amending the state finance law, the general municipal law, the public authorities law and the highway law relating to enacting the New York state buy American salt act, as proposed in legislative bills numbers S. 9441 and A. 7919-A, is amended to read as follows:

§ 12-a. The New York state buy American salt act. 1. Use of American materials. (a) Notwithstanding any other provision of law, [~~each~~] when soliciting a contract for the purchase [~~or procurement made by any public authority shall contain a provision that the~~] of rock salt[~~,~~] or sodium chloride, [~~used or supplied in the performance of~~] the commis-

sioner of transportation may award such contract [~~or any subcontract thereto shall be~~] to the responsible and reliable bidder offering to supply rock salt or sodium chloride that is mined or hand harvested in the United States, and which offer is within ten percent of the lowest price or best value offer, rather than to the lowest responsible and reliable bidder.

(b) [~~No bidder shall be deemed to be the lowest responsible and reliable bidder and no bid shall be deemed the best value unless the bid offered by such bidder will comply with the contract term required by paragraph (a) of this subdivision.~~

~~(c) The provisions of paragraph (a) of this subdivision shall not apply in any case or category of cases in which the head of such public authority determines that:~~

~~(i) such requirement would not be in the public interest;~~

~~(ii) such requirement would result in unreasonable costs;~~

~~(iii) such materials and products cannot be produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or~~

~~(iv) obtaining such materials and products in the United States would increase the cost of the contract by an unreasonable amount.~~

~~(d)~~] If it has been determined by a court or federal or state agency that any person intentionally:

(i) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any rock salt, or sodium chloride product used in projects to which this section applies, sold in or shipped to the United States that was not mined or hand harvested in the United States; or

(ii) represented that any rock salt, or sodium chloride product procured in a contract to which this section applies that was not produced in the United States, was produced in the United States; then that person shall be ineligible to receive any contract or subcontract with this state pursuant to the debarment or suspension provisions provided under section one hundred thirty-nine-a of the state finance law.

[~~(e)~~] (c) This section shall be applied in a manner consistent with the state's obligations under any applicable international agreements pertaining to government procurement.

2. Definitions. For the purposes of this section, the following words shall have the following meanings unless specified otherwise:

(a) [~~"Public authority" means a governmental entity as that term is defined in section one hundred thirty-nine-j of the state finance law;~~

~~(b)~~] "Mined or hand harvested in the United States" means: extracted or collected from land or ponds within the boundary of the United States, from the initial separation from the earth through the addition of any additives necessary for commercial sale;

[~~(c)~~] (b) "United States" means the United States of America and includes all territory, continental or insular, subject to the jurisdiction of the United States.

§ 5. Section 7 of a chapter of the laws of 2022 amending the state finance law, the general municipal law, the public authorities law and the highway law relating to enacting the New York state buy American salt act, as proposed in legislative bills numbers S. 9441 and A. 7919-A, is amended to read as follows:

§ 7. This act shall take effect [~~immediately~~] April 1, 2023 and shall apply only to contracts entered into after such date.

§ 6. This act shall take effect immediately, provided however that sections one, two, three and four of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2022 amending the state finance law, the general municipal law, the public authorities law and the highway law relating to enacting the New York state buy American salt act, as proposed in legislative bills numbers S. 9441 and A. 7919-A, takes effect.