§ 120-w. Contracts and agreements for solid waste management, collection and disposal. 1. Definitions. As used in this section:

(a) "Municipality" means a town, city, county, or village or any designated public agency thereof, or a garbage or sanitary district established under the Nassau county civil divisions act; or any two or more of the foregoing which are acting jointly in connection with a solid waste management facility, or a public authority.

(b) "Solid waste management-resource recovery facility" or "facility" or "project" means any facility, plant, works, system, building, structure, improvement machinery, equipment, fixture or other real or personal property which is to be used, occupied or employed beyond the initial solid waste collection process for the storage, processing, or disposal of solid waste or the recovery by any means of any material or energy product or resource therefrom including but not limited to recycling centers, transfer stations, baling facilities, rail haul or barge haul facilities, processing systems, resource recovery facilities or other facilities for reducing solid waste volume, sanitary landfills, plants and facilities for compacting, composting or pyrolization of solid wastes, incinerators, and other solid waste disposal, reduction or conversion facilities. For the purpose of this section, solid waste management-resource recovery facilities include solid waste recovery and management projects as defined in subdivision two of section 51-0903 of the environmental conservation law.

(c) "Resource recovery" means the separation, extraction and recovery of useable materials or energy from solid waste through source separation, recycling centers or other programs, projects or facilities.

(d) "Person" means a municipality or other governmental body, public corporation or authority, private corporation, partnership or individual.

(e) "Source separation" means the segregation of recyclable materials from the solid waste stream at the point of generation for separate collection, sale or other disposition.

2. Notwithstanding the provisions of any other law, general, special or local relating to the length, duration and terms of contracts which a municipality may enter into, any municipality may enter into a contract with any person, upon such terms and conditions as may be agreed upon,

for the design, construction, operation, financing, ownership or maintenance of a solid waste management-resource recovery facility, for the processing or disposal of solid waste or for a system of collection and disposal of municipal solid waste through resource recovery which may include source separation, for a period not to exceed twenty-five years, and, except in a city having a population of one million or more, for collection and disposal of municipal solid wastes by means other than resource recovery for a period not to exceed five years as provided for in this section.

3. The share of the cost to be paid by municipalities acting jointly shall be determined in any manner which may be agreed upon, and such share shall be included in the annual budget of the participating municipality as an expense and levied against the taxable real property in the municipality or municipalities.

4. Construction, financing and operation of solid waste management-resource recovery facilities. (a) Notwithstanding the provisions of any other law, general, special or local relating to the length, duration and terms of contracts a municipality may enter into, any county, city, town or village, or any combination thereof, is hereby authorized and empowered from time to time to enter into contracts, leases or rental agreements, with, or grant licenses, permits, concessions or any other authorizations, to any person, upon such terms and conditions for such consideration and for such term or duration, not to exceed twenty-five years, as may be agreed upon by any county, city, town or village or any combination thereof, and such person, whereby, for any purpose or purposes hereinafter referred to, such person is granted the right to construct, maintain, use, occupy or carry on activities in the whole or any part of a solid waste management-resource recovery facility on a site authorized by any county, city, town or village or any combination thereof.

(b) Prior to or after the expiration or termination of the term or duration of any contract, lease, rental agreement, license, permit, concession, or other authorization, entered into or granted pursuant to the provisions of this section, any county, city, town or village or any combination thereof, in accordance with the requirements and conditions

of this section, may from time to time enter into amended, supplemental, new, additional or further contracts, leases or rental agreements with, and grant new, additional, supplemental, or further licenses, permits, concessions, or other authorizations to the same or any other person for any purpose or purposes referred to herein.

(c) The person, entering into any contract, lease, rental agreement, license, permit, concession, or other authorization referred to herein, with any county, city, town or village or any combination thereof, may be granted the rights hereinbefore referred to for any purpose or purposes as shall provide for the benefit of the people of any county, city, town or village or any combination thereof, and the improvement of their health and welfare, by the utilization of solid waste management-resource recovery systems, technology, processes and procedures, and for any purpose which aids in the financing of the construction and operation of a solid waste management-resource recovery facility for the benefit of any county, city, town or village or any combination thereof.

(d) The products generated by any solid waste management-resource recovery facility may be sold, utilized or otherwise disposed of, pursuant to contract, lease, rental agreement, license, permit, concession, or other authorization, between any municipality and any person, upon such terms and conditions for such consideration, and for such term or duration, not to exceed twenty-five years, as may be agreed upon by any municipality and such person.

(e) It is the intent of the legislature that overall cost should in all cases be a major criterion in the selection of contractors for award of contracts pursuant to this section and that, wherever practical, such contracts which include construction work should be procured through competitive bidding procedures as prescribed by sections one hundred one and one hundred three of this chapter. It is further the intent of the legislature to acknowledge the highly complex and innovative nature of resource recovery technology for processing mixed solid waste, the relative newness of the variety of resource recovery systems now available, the desirability of a single point of responsibility for the development of facilities and the economic and technical utility of contracts for resource recovery projects which include in their scope various combinations of design, construction, operation, management

and/or maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to the municipality to award a contract on the basis of factors other than cost alone, including but not limited to facility design, system reliability, energy efficiency, compatibility with source separation and other recycling systems and environmental protection. Accordingly, and notwithstanding the provisions of any general, special or local law or charter, a contract entered into between a municipality and any person pursuant to this section may be awarded pursuant to public bidding in compliance with sections one hundred one and one hundred three of this chapter or pursuant to the following provisions for the award of a contract based on evaluation of proposals submitted in response to a request for proposals prepared by or for the municipality:

(1) The municipality shall require that each proposal to be submitted shall include:

(i) information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract;

(ii) a proposal clearly identifying and specifying all elements of cost which would become charges to the municipality, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to the cost of planning, design, construction, operation, management and/or maintenance of any facility; and clearly identifying and specifying all elements of revenue which would accrue to the municipality from the sale of any material or energy produced or from any other source; provided, that the municipality may prescribe the form and content of such proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation by the municipality of such proposal; and provided, further, that the municipality may set maximum allowable cost limits in any form in the request for proposals; and

(iii) such other information as the municipality may determine to have

a material bearing on its ability to evaluate any proposal in accordance with subparagraph five of this paragraph;

(2) To provide for public information and review:

(i) prior to the issuance of a request for proposals pursuant to this paragraph, the municipality shall publish notice of such issuance in the official newspaper of the municipality, if any, in at least one newspaper of general circulation, in the state register and in the environmental notice bulletin. Concurrent with the publication of such notice a draft request for proposals shall be filed with the clerk or chief executive officer of the municipality;

(ii) after allowing a sixty day comment period and an additional ten days to review such comments, the municipality may publish the final request for proposals and concurrent with such publication shall publish notice of such issuance in the manner specified in item (i) of this subparagraph. Concurrent with the publication of the final request for proposals a set of comments filed in relation to the draft request for proposals and findings related to the substantive elements of such comments shall be filed along with the request for proposals with the clerk or chief executive officer of the municipality and in the municipal public library or libraries in proximity to the proposed site or sites;

(3) Proposals received in response to such request for proposals shall be evaluated by the municipality as to net cost or, if a net revenue is projected, net revenue, and, in a manner consistent with provisions set forth in the request for proposals, may be evaluated on the basis of additional factors, including but not limited to the technical evaluation of facility design, system reliability, energy balance and efficiency, environmental protection, overall employment and recovery of materials. The evaluation of such proposals and the determination of whether a proposer is "responsible" may include, but shall not be limited to, consideration, in a manner consistent with provisions set forth in the request for proposals, of the record of the proposer in complying with existing labor standards and recognizing state and federally approved apprentice training programs, and the willingness of the proposer to provide for meaningful participation of minority group persons and business enterprises in the conduct of the work;

(4) The municipality may make a contract award to any responsible

proposer selected pursuant to subparagraph three of this paragraph based on a determination by the municipality that the selected proposal is most responsive to the request for proposals and may negotiate with any proposer; provided, however, that if an award is made to any proposer whose total proposal does not provide either the lowest net cost or, if a net revenue is projected, the greatest net revenue of any proposal received, the municipality shall adopt a resolution after public hearing which includes particularized findings relevant to factors evaluated pursuant to subparagraph three indicating that the municipality's requirements are met by such award and that such action is in the public interest.

(f) Whenever a municipality enters into a contract pursuant to this section for the construction of a solid waste management-resource recovery project, the provisions of section two hundred twenty of the labor law shall be applicable to such construction work.

5. a. In a city having a population of one million or more any contract entered into pursuant to the provisions of this section shall be limited to the within enumerated facilities appearing in the following schedule:

(a) Arthur Kill located at Fresh Kill Landfill, Staten Island.

(b) West 215th. Street located at 215th. Street between Tenth Avenue and the Harlem River, borough of Manhattan.

(c) Barretto Point located at Tiffany and Ryawa Streets, borough of Bronx.

(d) Pilot Block located at 2nd. Avenue and 121st. Street, borough of Manhattan.

(e) Westway-A located at 28th. Street and the Hudson river, borough of Manhattan, Westway-B located at Canal Street and the Hudson river, borough of Manhattan.

(f) Navy Yard located at the Brooklyn Navy Yard, borough of Brooklyn.

(g) Idlewild located at Idlewild, borough of Queens.

(h) South Shore located at Forbell Street and 157th. Avenue, borough of Brooklyn.

(i) Edgemere located at Edgemere Landfill, borough of Queens.

(j) Integrated Utility located at Hellgate, Consolidated Edison plant, borough of Bronx.

(k) Upgraded Betts Avenue incinerator located in the borough of Brooklyn.

(l) Upgraded Greenpoint incinerator located in the borough of Brooklyn.

(m) Upgraded Southwest Brooklyn incinerator located in the borough of Brooklyn.

(n) Hamilton Avenue facility located in the borough of Brooklyn.

(o) Existing 135th. Street M.T.S. located in the borough of Manhattan.

(p) Existing 91st. Street M.T.S. located in the borough of Manhattan.

(q) North Shore located at thirty-first Avenue and Flushing Bay, borough of Queens.

(r) Existing South Bronx located in the borough of the Bronx.

(s) Harlem River Yards located in the borough of the Bronx.

(t) Columbia Street Marine Terminal located in the borough of Brooklyn.

b. The sustained daily tonnage throughput capacity of any solid waste recovery and management facility constructed pursuant to this section in such city shall not exceed three thousand tons per day.

c. Notwithstanding any other provision of law, no solid waste recovery and management facility having a capacity to generate electricity or steam and having a sustained daily tonnage throughput capacity of greater than twenty-five tons per day, shall be constructed in the county of Richmond except that this limitation shall not apply to a single solid waste recovery and management facility having a sustained daily tonnage throughput capacity of not more than three thousand tons per day to be constructed at Arthur Kill, located at Fresh Kill landfill.

d. This subdivision shall not apply to facilities to be used for the source separation, collection, storage, processing or marketing of recyclable or reusable components of solid waste as defined in paragraph b of subdivision two of section one hundred twenty-aa of this article, provided, however that in the borough of Staten Island any such facility shall be located at Fresh Kill landfill.

6. An action, suit or proceeding contesting the validity of a contract awarded pursuant to this section, or the validity of the procedures relating to such award, must be commenced within sixty days after publication of notice of such award as hereinafter prescribed, if the following requirements are met:

(a) official action of the municipality in awarding a contract under this section shall contain a statement that the validity of such contract and the procedures relating to its award may be contested only if:

(1) such action, suit or proceeding is commenced within sixty days after the date of publication of such official action; and

(2) such award of procedure was not authorized pursuant to this section; or

(3) any of the provisions of this section which should be complied with at the date of the publication of such official action have not been substantially complied with; or

(4) a conflict of interest can be shown in the manner in which the contract was awarded; and

(b) notice of the official action of the municipality awarding a contract under this section shall be published in full by the clerk or chief executive officer of the municipality in substantially the following form in the official newspaper of the municipality, if any, in at least one newspaper of general circulation, in the state register and in the environmental notice bulletin:

"On (date) the (name of municipality) awarded a contract to (name of party) pursuant to section one hundred twenty-w of the general municipal law for the (purpose of contract). The validity of this contract or the procedures which led to its award may be hereafter contested only by action, suit or proceeding commenced within sixty days after the date of this notice and only upon the ground or grounds that: (1) such award or procedure was not authorized pursuant to that

section, or (2) any of the provisions of that section which should be complied with at the date of this publication have not been substantially complied with, or (3) a conflict of interest can be shown in the manner in which the contract was awarded; or by action, suit or proceeding commenced on the grounds that such contract was awarded in violation of the provisions of the Constitution.

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Clerk or other official or person designated by the municipality"

7. Every contract entered into between a municipality and a project developer pursuant to the provisions of subparagraph four of paragraph (e) of subdivision four of this section, for construction of a solid waste management-resource recovery building by the project developer, shall contain provisions that such building shall be constructed through construction contracts awarded through public competitive bidding in accordance with paragraphs (a) through (g) of this subdivision; that the project developer shall furnish a bond guaranteeing prompt payment of moneys that are due to all persons furnishing labor and materials pursuant to the requirements of such construction contracts, and that a copy of such payment bond shall be kept by the municipality and shall be open to public inspection; provided, however, that the requirements of this subdivision shall not apply when the cost of such construction is less than five thousand dollars.

(a) The project developer shall advertise for bids for such construction contracts in a daily newspaper having general circulation in the county in which such public solid waste management-resource recovery building is to be located. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such notice will be publicly opened and read. An employee of the municipality shall be designated to open the bids at the time and place

specified in the notice. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the publication of such advertisement and date on which the bids are opened.

(b) Except as otherwise provided in section two hundred twenty-two of the labor law, when the entire cost of constructing such building shall exceed three million dollars in the counties of the Bronx, Kings, New York, Queens, and Richmond; one million five hundred thousand dollars in the counties of Nassau, Suffolk and Westchester; and five hundred thousand dollars in all other counties within the state, the project developer shall prepare separate specifications for the following subdivisions of such work, so as to permit separate and independent bidding upon each subdivision:

(i) plumbing and gas fittings;

(ii) steam heating, hot water heating, ventilating and air conditioning apparatus; and

(iii) electric wiring and standard illuminating fixtures.

(b-1) Each bidder on a public work contract, where the preparation of separate specifications is not required, shall submit with its bid a separate sealed list that names each subcontractor that the bidder will use to perform work on the contract, and the agreed-upon amount to be paid to each, for: (i) plumbing and gas fitting, (ii) steam heating, hot water heating, ventilating and air conditioning apparatus and (iii) electric wiring and standard illuminating fixtures. After the low bid is announced, the sealed list of subcontractors submitted with such low bid shall be opened and the names of such subcontractors shall be announced, and thereafter any change of subcontractor or agreed-upon amount to be paid to each shall require the approval of the public owner, upon a showing presented to the public owner of legitimate construction need for such change, which shall be open to public inspection. Legitimate construction need shall include, but not be limited to, a change in project specifications, a change in construction material costs, a change to subcontractor status as determined pursuant to paragraph (e) of subdivision two of section two hundred twenty-two of the labor law, or the subcontractor has become otherwise unwilling, unable or unavailable to perform the subcontract. The sealed lists of subcontractors submitted by all other bidders shall be returned to them

unopened after the contract award.

(c) After public competitive bidding the project developer shall award one or more separate contracts for each of the above subdivisions of such work, whenever separate specifications are required pursuant to paragraph (b) of this subdivision, and one or more contracts for the remainder of such work. The project developer may award such contracts at different times. Contracts awarded pursuant to this subdivision shall be awarded by the project developer to the lowest responsible and responsive bidder and shall be contracts of the project developer and not of the municipality which shall have no obligation or liabilities, whatsoever, thereunder. The project developer shall have the responsibility for the supervision, coordination, and termination of such contracts, unless otherwise specified in contractual terms between the project developer and the municipality.

(d) In determining whether a prospective contractor is responsible and responsive, the project developer may require that prospective contractors:

(i) have adequate financial resources or the ability to obtain such resources;

(ii) be able to comply with the required or proposed delivery or performance schedule;

(iii) have a satisfactory record of performance;

(iv) have the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them;

(v) have the necessary production, construction and technical equipment and facilities, or the ability to obtain them;

(vi) be eligible to receive an award under applicable laws and regulations and be otherwise qualified.

(e) The project developer may reject any bid of a bidder which the project developer determines to be nonresponsible or nonresponsive to the advertisement for bids.

(f) The project developer may, in its discretion, reject all bids, and may revise bid specifications and may readvertise for bids as provided herein.

(g) Only as used in this subdivision:

(i) "project developer" means any private corporation, partnership, or individual or combination thereof which has submitted a proposal in

response to a request for proposals issued pursuant to subparagraph two of paragraph (e) of subdivision four of this section;

(ii) "construction" shall include reconstruction, rehabilitation or improvement;

(iii) "solid waste management-resource recovery building" means a building of a solid waste management-resource recovery facility. Such building shall not include the system to be used for the purposes of receiving, processing, handling or storing solid waste, the products and by-products derived therefrom, or materials used in such processing or handling and any equipment or property involving proprietary or trade secrets.