

THE COUNCIL

The City of New York

April 28, 1998

Int. No. 287

Introduced by the Speaker (Council Member Vallone) and Council Members Freed, McCaffrey, Wooten, Dear, Duane, Henry, Marshall, Rodriguez and Stabile; also Council Members Berman, Carrion, Clarke, Cruz, DiBrienza, Fisher, Harrison, Koslowitz, Lasher, O'Donovan, Povman, Provenzano, Robles, Sabini and Weiner—read and referred to the Committee on Contracts.

A LOCAL LAW

To amend the charter of the city of New York in relation to the award of City contracts to New York based vendors.

Be it enacted by the Council as follows:

- 1 Section 1. Declaration of Legislative Findings and Intent. The Council of the city
- 2 of New York finds that while the United States is experiencing record economic growth,
- 3 New York State is lagging far behind most of the nation in job creation, ranking 48th in
- 4 terms of job growth since 1995. The State's unemployment rate is 33 percent above the
- 5 national average and in many parts of the State over twice the national average.
- 6 The Council further finds that in New York City alone, 20 percent of \$5.2 billion in
- 7 certain contracts for goods and services were awarded to non-New York State based
- 8 companies in Fiscal 1997. If half of these contracts were awarded in State, it would
- 9 potentially generate an additional \$1 billion in increased economic activity, translating
- 10 into 10,000 to 15,000 new jobs. The Council therefore finds that the economic and
- 11 social benefits to be derived by using the City's substantial purchasing power to award
- 12 contracts to New York based vendors are far reaching and would create a considerable
- 13 number of employment opportunities and stimulate significant economic activity.

1 This legislation would amend various provisions of the charter of the city of New
2 York to allow the City to award contracts to responsible New York City vendors which
3 submit bids that are within five percent of the lowest bid submitted by a non New York
4 City based vendor. It would further permit the City to award contracts to responsible
5 New York State vendors which submit bids within five percent of the lowest bid submit-
6 ted by an out-of-state vendor. In contracts for the purchase of food products, the City
7 would offer a preference of up to seven percent for the purchase of food products that
8 are grown, produced, harvested and/or processed on a family farm within New York
9 State.

10 § 2. Section 313 of the charter of the city of New York is amended to add a new
11 subdivision c to read as follows:

12 *c. Definitions. For purposes of chapter 13 of the charter, the following terms shall*
13 *be defined as follows:*

14 1. "New York City vendor" is a vendor which (a) maintains an established place of
15 business in New York City, files a New York City General Corporation Tax return or a
16 New York City Unincorporated Business Income Tax return for the most recent tax year
17 except in cases of newly established businesses; and (b) has at least fifty employees on
18 payroll working full-time at one or more locations in New York City; provided, however,
19 that a firm with fewer than one hundred employees on its payroll shall qualify if at least
20 fifty percent of the employees on its payroll work full-time at one or more locations in
21 New York city; and (c) in the case of a vendor of goods or services, such goods or ser-
22 vices must be manufactured or rendered in the city.

23 2. "New York State vendor" is a vendor which (a) maintains an established place of
24 business in New York State, files either a General Business Corporation Franchise Tax
25 return, a Partnership Tax return, or a New York S Corporation Franchise Tax return

1 *except in cases of newly established businesses; (b) has at least fifty employees on pay-*
2 *roll working full-time at one or more locations in New York state; provided, however,*
3 *that a firm with fewer than one hundred employees on its payroll shall qualify if at least*
4 *fifty percent of the employees on its payroll work full-time at one or more locations in*
5 *New York state; and (c) in the case of a vendor of goods or services, such goods or ser-*
6 *vices must be manufactured or rendered in the state.*

7 3. "New York family farm" is a farm owned by a family that is involved in the day-
8 *to-day operation of such farm, where the farm is the primary source of family income,*
9 *such family must comprise the primary source of labor on such farm and the majority of*
10 *the farm business must be funded through the labor of the family living upon the premis-*
11 *es on which such farm is located. A family farm can be incorporated or run as a part-*
12 *nership, provided that the majority of capital is derived from the owners of such farm*
13 *and not from any outside sources that have no link to the farm and that in the case of an*
14 *incorporated family farm, at least 75 percent of the stock must be owned by family mem-*
15 *bers and in the case of a partnership, family members must comprise at least two-thirds*
16 *of the partners.*

17 4. "Food products grown, produced, harvested, and or processed on a family
18 *farm" includes all agricultural, horticultural, floricultural, and vegetable and fruit*
19 *products of the soil, livestock and meats, poultry, eggs, milk and all dairy products;*
20 *nuts, honey, maple tree sap and maple products produced therefrom and grains and any*
21 *products made from such grains.*

22 § 3. Subsection 2 of subdivision b of Section 313 of the charter of the City of New
23 York is amended to read as follows:

24 2. The agency letting the contract may reject all bids if it shall deem it for the inter-
25 est of the city so to do; if not, it shall, without consent or approval, award the contract to

1 the lowest responsible bidder, unless the mayor shall determine in writing, justifying the
2 reasons therefor, that it is in the best interest of the city that a bid other than the lowest
3 responsible bidder shall be accepted. *If a responsible New York City vendor's bid*
4 *exceeds the lowest bid submitted by a non-New York City vendor by no more than five*
5 *percent, the mayor shall have the discretion to award the contract to the New York city*
6 *vendor. If a responsible New York State vendor's bid exceeds the lowest bid submitted*
7 *by a non-New York State vendor by no more than five percent, the mayor shall have the*
8 *discretion to award the contract to the New York State vendor. In contracts for the pur-*
9 *chase of food products, the mayor shall have the discretion to award a contract to a*
10 *responsible New York family farm if such family farm's bid exceeds the lowest bid sub-*
11 *mitted by a non-New York family farm by no more than seven percent. In order to quali-*
12 *fy as a New York City or a New York State vendor or a New York family farm for*
13 *purposes of the preferences provided pursuant to this subdivision, a vendor shall*
14 *include a notarized statement in its bid documents stating that it meets the criteria of the*
15 *relevant definition set forth in subdivision c of section 313 of this charter. All [S]such*
16 *determinations shall be filed with the procurement policy board and published in the*
17 *City Record. Tie bids are to be decided by the agency letting the contract and the award*
18 *made. In cases in which tie bids are submitted by a responsible New York State vendor*
19 *and a responsible non-New York State vendor, the agency shall award the contract to*
20 *the New York State vendor. Whenever a contract is awarded to other than the lowest*
21 *responsible bidder because the lowest bidder is determined by the agency not to be a*
22 *responsible bidder or because the lowest bid is determined by the agency to not meet the*
23 *requirements and criteria set forth in the invitation for bids, the agency making such*
24 *determination and awarding such contract shall immediately notify the lowest bidder of*
25 *such determination and shall file in the agency contract file a statement in detail of the*

1 reasons therefor and shall submit copies of such determination to the procurement policy
2 board. *All invitations for bids shall include a statement informing potential bidders of*
3 *the City's policy of offering a price preference of: a) up to five percent for New York*
4 *State vendors; and c) up to seven percent for food products grown, produced, harvested*
5 *and or processed on a New York family farm.*

6 § 4. Section 319 of the charter of the city of New York is amended to read as
7 follows:

8 **Sec 319. Competitive sealed proposals.** In accordance with section three hundred
9 seventeen, proposals may be solicited through a request for proposals with award to the
10 responsible offeror whose proposal is determined to be the most advantageous to the
11 city, taking into consideration the price and such other factors or criteria as are set forth
12 in the request for proposals. No other factors or criteria shall be used in the evaluation
13 and award of the contract except those specified in the request for proposals. *All request*
14 *for proposals shall include a statement informing potential proposers of the City's poli-*
15 *cy of offering a price preference of: a) up to five New York City vendors; b) up to five*
16 *percent for New York State vendors; and c) of up to seven percent food products grown*
17 *produced, harvested and or processed on a New York family farm. In order to qualify as*
18 *a New York City or a New York State vendor or a New York family farm for purposes of*
19 *the preferences provided pursuant to this subdivision, a vendor shall include a notarized*
20 *statement with its proposal stating that it meets the criteria of the relevant definition set*
21 *forth in subdivision c of section 313 of this charter.* Discussions may be conducted with
22 responsible offerors who submit proposals, provided that offerors shall be accorded fair
23 treatment with respect to any opportunity for discussion and revision of the proposals.

24 § 5. This local law shall take effect forty-five days after its enactment. Except that
25 the procurement policy board may promulgate rules and other administrative actions

- 1 may be taken to implement its provisions including but not limited to the revision of
- 2 standard invitation for bid and request for proposal documents.

Note: Matter in *italics* is new; matter in brackets [] to be omitted.