

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1986

No. 15 2583-A

Introduced by Council Member O'Donovan (by request of the Mayor); also Council Members Wooten, Spigner, Gerges, Williams, Castaneira Colon, Ferrer and Pinkett.

A LOCAL LAW

To amend the administrative code of the city of New York in relation to awarding city contracts to small business enterprises.

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent. The council hereby finds and declares that small business enterprises, especially those which conduct business and provide employment within economically disadvantaged areas of the city, have generally provided a means for talented, innovative, diligent and dedicated individuals with limited financial backing to stimulate and contribute to the social and economic livelihood of themselves, their communities and their city. The council further finds that the costs of doing business in the city and the size of many contracts for goods and services awarded by the city have made it difficult for many small business enterprises to compete successfully for such contracts. The active encouragement of the development of small business enterprises benefits the people of the city of New York by providing jobs, economic opportunities, and a more diverse and accessible marketplace, as well as an expanded tax base. The development of such enterprises also serves the public interest in that a greater number of enterprises will be able to compete for city contracts, and this increased competition should lead to lower costs to the city. This local law authorizes the establishment of a two year pilot program to promote the opportunity for small business enterprises to bid successfully for city contracts for goods and services, without reducing the safeguards of the competitive bidding process, or in any way authorizing increased expenditures for, or diminished quality of, goods and services provided to the city. Before the end of the two year period the mayor shall report to the council concerning the effectiveness of this program, in order that it may be determined whether the program shall be continued, modified or allowed to expire.

§2. The administrative code of the city of New York, as recodified by chapter nine hundred seven of the laws of nineteen hundred eighty-five, is amended by adding a new section 6-108.2 to read as follows:

§6-108.2 Small business enterprises.

a. Definitions

(1) "Small business enterprise" means a small business enterprise vendor or a small professional services business enterprise.

(2) "Economic development area" means an area of the city designated as eligible for participation in the community development block grant program of the United States department of housing and urban development.

(3) "Small business enterprise vendor" means a business

(a) in which, in two of the three tax years immediately preceding the date of application for certification, either:

(i) its annualized gross sales of goods were two million dollars or less, or

(ii) the difference between its annualized gross sales and its cost for goods sold was two hundred thousand dollars or less; provided, however, that a business which has been in existence for less than three tax years must meet the requirements of subparagraph (i) or (ii) of this subdivision for each tax year of its existence; and

(b) which has had at least one but not more than nineteen full-time employees for at least six months prior to the date of application for certification; and

(c) which has its principal place of business in an economic development area as determined in accordance with regulations promulgated pursuant to subdivision e of this section; and

(d) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(e) which has been operating for at least twelve months prior to the date of application for certification; and

(f) which has been certified according to the procedure provided for in subdivision d of this section.

(4) "Small professional services business enterprise" means a business

(a) in which annualized gross receipts for the performance of services did not exceed seven hundred thousand dollars in two of the three tax years immediately preceding the date of application for certification; provided, however, that a business which has been in existence for less than three tax years shall meet the requirements of this subdivision for each tax year of its existence; and

(b) which has had at least one but not more than nineteen full-time employees for at least six months prior to the date of application for certification; and

(c) which has its principal place of business in the city as determined in accordance with regulations promulgated pursuant to subdivision e of this section; and

(d) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(e) which has been operating for at least twelve months prior to the date of application for certification; and

(f) which has been certified according to the procedure provided for in subdivision d of this section.

b. Requirements contracts.

Each contracting agency seeking to award a contract for the supply of goods on a requirements basis which involves the expenditure of more than one hundred thousand dollars for the purchase of goods determined by the mayor or the mayor's designee to be subject to the small business enterprise program because of the capacity of small business enterprises to provide such goods shall do so in the following manner:

(1) The contracting agency shall solicit bids for a primary contract to supply its requirements. Such primary contract shall contain a provision reserving the right to award a secondary contract to another contractor to supply up to ten percent of the estimated requirements set forth in the primary contract, at a unit price not to exceed the unit price of the primary contract.

(2) After the primary contract is awarded, the contracting agency shall solicit bids for a secondary contract to supply up to ten percent of the estimated requirements set forth in the primary contract, at a unit price not to exceed the unit price of the primary contract.

(3) If it receives one or more bids for the secondary contract from responsible bidders, the contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, including applicable competitive bidding requirements, and unless otherwise determined by the board of estimate pursuant to subdivision b of section three hundred forty-three of the charter, award the secondary contract as follows:

(a) If a small business enterprise vendor is the lowest responsible bidder, the contract shall be awarded to such vendor.

(b) If a small business enterprise vendor has tied with another bidder which is not a small business enterprise vendor as the lowest responsible bidder, the contract shall be awarded to the small business enterprise vendor.

(c) If two or more small business enterprise vendors have tied as the lowest responsible bidder, the contract shall be awarded to the small business enterprise vendor chosen from among them at the discretion of the contracting agency.

(d) If no small business enterprise vendor is a responsible bidder, the contract shall be awarded to the lowest responsible bidder; provided however, that if the bid submitted by the lowest responsible bidder is at a unit price which is equal to the unit price of the primary contract, the contracting agency shall, at its discretion, determine whether to award the secondary contract or to obtain its requirements under the primary contract.

(e) If the lowest responsible bidder is not a small business enterprise vendor, but a small business enterprise vendor is a responsible bidder, the contracting agency shall refer the bids to the board of estimate which, pursuant to such rules as it may adopt, and in accordance with subdivision b of section three hundred forty-three of the charter, may determine that it is in the public interest that the contract shall be awarded to other than the lowest responsible bidder.

c. Professional services contracts.

Each contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, seek to ensure that not less than ten percent of the total dollar amount of all contracts awarded for professional services during each fiscal year shall be awarded to small professional service business enterprises. Contracting agencies shall seek to divide needed work into smaller units, if practicable and economically feasible, so that it may be bid on and successfully completed by small professional service business enterprises. The mayor or the mayor's designee shall promulgate regulations pursuant to subdivision e of this section setting forth the professional services which, because of the capacity of small business enterprises to provide such services, and the appropriateness of contracting with such enterprises for the provision of particular professional services, shall be subject to the procedures set forth in this subdivision.

d. (1) The mayor or the mayor's designee shall establish a procedure for the certification of businesses which meet the requirements of this section and regulations promulgated hereunder as either small business enterprise vendors or small professional service business enterprises. Such regulations shall set forth criteria to ensure that any business certified as a small business enterprise is an independent business and not substantially owned or controlled by any other business entity which would not qualify as a small business enterprise. Such regulations shall further require each business certified as a small business enterprise to submit periodic reports providing information as to its continuing qualification as a small business enterprise. Certification granted pursuant to the subdivision shall be valid for a period of two years.

(2) The mayor or the mayor's designee may rescind the certification of a small business enterprise after providing notice and an opportunity to be heard to the business upon a finding that such business is not in compliance with the requirements of this section or the regulations promulgated hereunder.

e. The mayor or the mayor's designee shall promulgate such rules and regulations as may be necessary for the purpose of implementing the provisions of this section. Such regulations shall require contracting agencies to submit monthly reports to the mayor or the mayor's designee concerning contract awards to small business enterprises. All rules and regulations pursuant to and in furtherance of this section shall be adopted and amended in accordance with section eleven hundred five of the charter.

§3. The administrative code of the city of New York is amended by adding a new section 343-8.2 to read as follows:

§343-8.2 Small business enterprises.

a. Definitions

(1) "Small business enterprise" means a small business enterprise vendor or a small professional services business enterprise.

(2) "Economic development area" means an area of the city designated as eligible for participation in the community development block grant program of the United States department of housing and urban development.

(3) "Small business enterprise vendor" means a business

(a) in which, in two of the three tax years immediately preceding the date of application for certification, either:

(i) its annualized gross sales of goods were two million dollars or less, or

(ii) the difference between its annualized gross sales and its cost for goods sold was two hundred thousand dollars or less;

provided, however, that a business which has been in existence for less than three tax years must meet the requirements of subparagraph (i) or (ii) of this subdivision for each tax year of its existence; and

(b) which has had at least one but not more than nineteen full-time employees for at least six months prior to the date of application for certification; and

(c) which has its principal place of business in an economic development area as determined in accordance with regulations promulgated pursuant to subdivision e of this section; and

(d) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(e) which has been operating for at least twelve months prior to the date of application for certification; and

(f) which has been certified according to the procedure provided for in subdivision d of this section.

(4) "Small professional services business enterprise" means a business

(a) in which annualized gross receipts for the performance of services did not exceed seven hundred thousand dollars in two of the three tax years immediately preceding the date of application for certification; provided, however, that a business which has been in existence for less than three tax years shall meet the requirements of this subdivision for each tax year of its existence; and

(b) which has had at least one but not more than nineteen full-time employees for at least six months prior to the date of application for certification; and

(c) which has its principal place of business in the city as determined in accordance with regulations promulgated pursuant to subdivision e of this section; and

(d) which is subject to the general corporation tax or the city unincorporated business income tax, and has paid such taxes as required; and

(e) which has been operating for at least twelve months prior to the date of application for certification; and

(f) which has been certified according to the procedure provided for in subdivision d of this section.

b. Requirements contracts.

Each contracting agency seeking to award a contract for the supply of goods on a requirements basis which involves the expenditure of more than one hundred thousand dollars for the purchase of goods determined by the mayor or the mayor's designee to be subject to the small business enterprise program because of the capacity of small business enterprises to provide such goods shall do so in the following manner:

(1) The contracting agency shall solicit bids for a primary contract to supply its requirements. Such primary contract shall contain a provision reserving the right to award a secondary contract to another contractor to supply up to ten percent of the estimated requirements set forth in the primary contract, at a unit price not to exceed the unit price of the primary contract.

(2) After the primary contract is awarded, the contracting agency shall solicit bids for a secondary contract to supply up to ten percent of the estimated requirements set forth in the primary contract, at a unit price not to exceed the unit price of the primary contract.

(3) If it receives one or more bids for the secondary contract from responsible bidders, the contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, including applicable competitive bidding requirements, and unless otherwise determined by the board of estimate pursuant to subdivision b of section three hundred forty-three of the charter, award the secondary contract as follows:

(a) If a small business enterprise vendor is the lowest responsible bidder, the contract shall be awarded to such vendor.

(b) If a small business enterprise vendor has tied with another bidder which is not a small business enterprise vendor as the lowest responsible bidder, the contract shall be awarded to the small business enterprise vendor.

(c) If two or more small business enterprise vendors have tied as the lowest responsible bidder, the contract shall be awarded to the small business enterprise vendor chosen from among them at the discretion of the contracting agency.

(d) If no small business enterprise vendor is a responsible bidder, the contract shall be awarded to the lowest responsible bidder; provided however, that if the bid submitted by the lowest responsible bidder is at a unit price which is equal to the unit price of the primary contract, the contracting agency shall, at its discretion, determine whether to award the secondary contract or to obtain its requirements under the primary contract.

(e) If the lowest responsible bidder is not a small business enterprise vendor, but a small business enterprise vendor is a responsible bidder, the contracting agency shall refer the bids to the board of estimate which, pursuant to such rules as it may adopt, and in accordance with subdivision b of section three hundred forty-three of the charter, may determine that it is in the public interest that the contract shall be awarded to other than the lowest responsible bidder.

c. Professional services contracts.

Each contracting agency shall, in a manner consistent with the requirements of applicable city, state and federal law, seek to ensure that not less than ten percent of the total dollar amount of all contracts awarded for professional services during each fiscal year shall be awarded to small professional service business enterprises. Contracting agencies shall seek to divide needed work into smaller units, if practicable and economically feasible, so that it may be bid on and successfully completed by small professional service business enterprises. The mayor or the mayor's designee shall promulgate regulations pursuant to subdivision e of this section setting forth the professional services which, because of the capacity of small business enterprises to provide such services, and the appropriateness of contracting with such enterprises for the provision of particular professional services, shall be subject to the procedures set forth in this subdivision.

d. (1) The mayor or the mayor's designee shall establish a procedure for the certification of businesses which meet the requirements of this section and regulations promulgated hereunder as either small business enterprise vendors or small professional service business enterprises. Such regulations shall set forth criteria to ensure that any business certified as a small business enterprise is an independent business and not substantially owned or controlled by any other business entity which would not qualify as a small business enterprise. Such regulations shall further require each business certified as a small business enterprise to submit periodic reports providing information as to its

continuing qualification as a small business enterprise. Certification granted pursuant to this subdivision shall be valid for a period of two years.

(2) The mayor or the mayor's designee may rescind the certification of a small business enterprise after providing notice and an opportunity to be heard to the business upon a finding that such business is not in compliance with the requirements of this section or the regulations promulgated hereunder.

e. The mayor or the mayor's designee shall promulgate such rules and regulations as may be necessary for the purpose of implementing the provisions of this section. Such regulations shall require contracting agencies to submit monthly reports to the mayor or the mayor's designee concerning contract awards to small business enterprises. All rules and regulations pursuant to and in furtherance of this section shall be adopted and amended in accordance with section eleven hundred five of the charter.

§4. Not later than one year prior to the date of expiration of this local law, the mayor or the mayor's designee shall submit a report to the council concerning the administration of the program established pursuant to this section. Such report shall evaluate the effectiveness of the program and shall include recommendations as to whether the program should be extended or modified. Such a report shall also be made six months prior to the expiration of this local law.

§5. If any provision of this local law or the application thereof is held invalid, the remainder of this local law and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

§6. This local law shall take effect ninety days from the date it shall have become a law, and shall remain in effect for a period of twenty-four months thereafter. Actions necessary to prepare for the implementation of this local law may be taken prior to its effective date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on March 22, 1984, and approved by the Mayor on June 6, 1986.

CARLOS CUEVAS, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 15 of 1986, Council Int. No. 583-A) contains the correct text and, received the following vote at the meeting of the New York City Council on May 22, 1986: 35 for, 0 against.

Was approved by the Mayor on June 6, 1986.

Was returned to the City Clerk on June 9, 1986.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.