



Legislation Text

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Int. No. 863-A

By Council Members Brannan, Louis, Brewer, Bottcher, Won, Abreu and Rivera

A Local Law to amend the New York city charter, in relation to expanding the application of procurement procedures for certain service contracts, and enhancing public notice requirements for changes to planned contract actions

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 312 of the New York city charter, as amended by local law number 63 for the year 2011, is amended to read as follows:

a. Prior to entering into, renewing, or [extending] amending a contract valued at more than [two hundred thousand] one million dollars to provide standard or professional services, or prior to renewing or amending a contract to provide standard or professional services that, following such renewal or amendment, would have a value of more than one million dollars, including agency task orders pursuant to multi-agency task order contracts, but excluding emergency procurements, government-to-government purchases, required source procurements as described in paragraph (2) of subdivision (d) of section 1-02 of title 9 of the rules of the city of New York, contracts that have a total value of more than one million dollars but for which the value of standard or professional services included in such contract is one million dollars or less, small purchases from businesses certified as minority or women-owned business enterprises pursuant to section thirteen hundred four of the charter, and the procurement of legal services or consulting services in support of current or anticipated litigation, investigative or confidential services, an agency shall follow the procedure established herein and the mayor shall comply with the reporting requirements set forth in paragraph 8. A contract or agency task order shall not be artificially divided in order to reduce the value of such contract or agency task order to avoid the

requirements of this section.

1. Prior to issuing an invitation for bids, request for proposals, or other solicitation, or renewing or [extending] amending an existing contract, the agency shall determine whether such contract is the result of or would result in the displacement of any city employee within the agency. For the purpose of this section, the term “displacement” shall mean a reduction in the number of funded positions, including but not limited to, that resulting from the attrition; layoff; demotion; bumping; involuntary transfer to a new class, title, or location; time-based reductions, or reductions in customary hours of work, wages, or benefits of any city employee.

[a.] (a) There shall be a presumptive determination that a proposed contract is the result of or would result in displacement if any of the following events occurred in the three year period preceding the date the agency intends to issue an invitation for bids, request for proposal, or other solicitation, or to renew or [extend] amend an existing contract:

(1) the displacement of a city employee within the agency who performs or has performed the services sought by the proposed contract [and/or] or services of a substantially similar nature or purpose; or

(2) the announcement of spending reductions in connection with a budgetary program, including but not limited to a Program to Eliminate the Gap, that could result or has resulted in the displacement of a city employee within the agency who performs or has performed the services sought by the proposed contract [and/or] or services of a substantially similar nature or purpose; or

(3) any other statement by an agency or the mayor of a specific anticipated employment action that could result or has resulted in the displacement of a city employee within the agency who performs or has performed the services sought by the proposed contract [and/or] or services of a substantially similar nature or purpose.

[b.] (b) If the agency determines that displacement would not occur, it shall include a certification to that effect, signed by the agency head, in any invitation for bids, request for proposals, or other solicitation, or with any contract renewal or [extension] amendment. Such certification shall detail the basis upon which the

agency determined that displacement would not occur, construing broadly the nature of the services sought and providing information including but not limited to: (i) whether any civil service title [and/or] or job title within the agency currently performs the services solicited [and/or] or services of a substantially similar nature or purpose, the names of such titles, and the extent to which agency employees within such titles currently perform such services; (ii) whether the solicited services expand, supplement, or replace existing services, and a detailed description comparing the solicited services with such existing services; (iii) whether there is capacity within the agency to perform the services solicited and, if there is no such capacity, a detailed description specifying the ways in which the agency lacks such capacity; (iv) for the term of the proposed contract, the projected headcount of employees within such titles or employees who perform such services [and/or] or services of a substantially similar nature or purpose; and (v) confirmation that none of the events set forth in subparagraph a of this paragraph occurred within the agency in the three year period preceding the date such agency intends to issue an invitation for bids, request for proposal, or other solicitation, or to renew or [extend] amend an existing contract.

[c.] (c) If the agency determines that displacement would occur, the agency shall determine the costs incurred and the benefits derived in performing the service, consistent with the scope and specifications within the solicitation, renewal, or [extension] amendment, with city employees, and shall submit such analysis, with all supporting documentation, prior to issuance of any solicitation or entry into any contract renewal or [extension] amendment, to the comptroller.

2. Immediately upon receipt of bids, proposals, and other solicitation responses, or prior to the renewal or [extension] amendment of an existing contract, the agency shall submit such determination, analysis, and supporting documentation to the council and to the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of subdivision a of this section.

3. Prior to award of a contract, a renewal, or an [extension] amendment, the agency shall perform a comparative analysis of the costs expected to be incurred and the benefits expected to be derived from entering

into, renewing, or [extending] amending a contract with the proposed vendor, based on such vendor's best and final offer, and such agency's analysis of the costs incurred and the benefits derived from providing the service with city employees. If the agency head intends to award, renew, or [extend] amend the contract, he or she shall submit the reasons therefor, together with such analysis, and all supporting documentation, to the comptroller, the council, and the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of subdivision a of this section.

4. The council may, within thirty days after receipt of such reasons, analysis, and supporting documentation hold a hearing on this matter. No contract award, renewal, or [extension] amendment shall be made prior to the expiration of this thirty-day period or a council hearing, whichever is sooner.

5. [a.] (a) All cost and comparative analyses required under this section shall be conducted in accordance with standard methodology of the office of management and budget, and consistent with the rules of the procurement policy board, as both are modified herein, subject to further modification by local law. Such analyses shall include all reasonable costs associated with performing the service using city employees and all reasonable costs associated with performing the service under the proposed contract or contract renewal or [extension] amendment.

[b.] (b) Such analyses shall further include the total number, qualifications, job descriptions, and titles of all personnel to be employed by the vendor under the proposed contract or contract renewal or [extension] amendment, as well as the nature and cost of salaries and benefits to be provided to such personnel.

[c.] (c) Such analyses shall further include, but not be limited to, the cost of employee supervision directly related to the provision of the service, vendor solicitation, contract preparation, contract administration, monitoring and evaluating the contractor, capitalization of equipment over the period such equipment shall be in use, supplies, the cost of providing the equivalent quantity and quality of service by city employees compared to the cost of providing such service by contract, based upon the best and final offer of the proposed vendor, and such other factors as will assist in arriving at full and accurate cost determinations and

comparisons.

6. The reasons given to award, renew, or [extend] amend the contracts shall include all factors that have been considered in determining whether contracting for this service is in the best interest of the city, whether or not such reasons are contained within the cost or comparative analyses. Such factors shall include, but not be limited to, the potential for contractor default, the time required to perform the service, and the quality of the service to be delivered.

7. The mayor or his or her designee may prepare and implement a plan of assistance for displaced city employees, which may include, but need not be limited to, training to place such employees in comparable positions within the contracting agency or any other agency. The cost of such assistance plan may be included within the cost of contracting-out in the cost and comparative analyses.

8. [a.] (a) For the purposes of this paragraph, the term “agency” means a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, advisory committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to, the department of education, the health and hospitals corporation, and the New York city housing authority, but shall not include any court, or any local development corporation or other not for profit corporation or institution, including such a corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility.

[b.] (b) The mayor shall, no later than July 31st of each year, produce and publish on the mayor's office of contract services website a plan and schedule for each agency detailing the anticipated contracting actions of each such agency for the upcoming fiscal year. The plan and schedule shall include: (i) information specific to each prospective invitation for bids, request for proposal, or other solicitation, including, but not limited to, the nature of services sought, the term of the proposed contract, the method of the solicitation the agency intends to utilize, the anticipated fiscal year quarter of the planned solicitation, the civil service [and/or] or job titles

within the agency who perform the services sought [and/or] or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services; and (ii) information specific to each proposed contract renewal or [extension] amendment, including, but not limited to, any modifications sought to the nature of the services performed under the contract, the term of the proposed renewed or [extended] amended contract, the reason(s) the agency intends to renew or [extend] amend such contract, the month and year of the expiration of the existing contract, the civil service [and/or] or job titles within the agency who perform the services sought [and/or] or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services.

[c.] (c) If an agency intends to issue an invitation for bids, request for proposal, or other solicitation, or to renew or [extend] amend an existing contract, but the mayor fails to include such prospective invitation, request, solicitation, renewal or [extension] amendment in the plan and schedule or such invitation, request, solicitation, renewal or amendment provides a longer contract term than the term provided in the plan and schedule or otherwise differs from the information included in the plan and schedule with respect to the nature of the services sought, the civil service or job titles within the agency that perform the services sought or services of a substantially similar nature or purpose, or the headcount of employees within such titles, the mayor shall provide public notice [sixty] ten days before such agency issues such invitation, request, or solicitation, or enters into such renewal or [extension] amendment. Such notice, which shall be posted on the website of the mayor's office of contract services [website] and in the city record, shall include: (i) information specific to the prospective invitation for bids, request for proposal, or other solicitation, including, but not limited to, the nature of services sought, the term of the proposed contract, the method of the solicitation the agency intends to utilize, the civil service [and/or] or job titles within the agency who perform the services sought [and/or] or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services; or (ii) information specific to the proposed contract renewal or [extension] amendment, including, but not limited to, any modifications sought to the nature of the services

performed under the contract, the term of the proposed renewed or [extended] amended contract, the reason(s) the agency intends to renew or [extend] amend such contract, the civil service [and/or] or job titles within the agency who perform the services sought [and/or] or services of a substantially similar nature or purpose, if any, and the headcount of employees within such titles who perform such services.

§ 2. Paragraph 1 of subdivision c of section 312 of the New York city charter, as added by a vote of the electors on November 7, 1989, is amended to read as follows:

1. For the purposes of this chapter, the term "special case" shall be defined as a situation in which it is either not practicable or not advantageous to the city to use competitive sealed bidding for one of the following reasons:

[i.] (a) specifications cannot be made sufficiently definite and certain to permit selection based on price alone;

[ii.] (b) judgment is required in evaluating competing proposals, and it is in the best interest of the city to require a balancing of price, quality, and other factors;

[iii.] (c) the good, service or construction to be procured is available only from a single source;

[iv.] (d) testing or experimentation is required with a product or technology, or a new source for a product or technology, or to evaluate the service or reliability of such product or technology; or

[v.] (e) such other reasons as defined by rule of the procurement policy board.

§ 3. This local law takes effect 45 days after it becomes law.

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