

5149--B

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, the general municipal law, the state finance law and the education law, in relation to advertisements for bids

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (c) of subdivision 3 of section 220 of the labor
2 law, as separately amended by chapter 678 of the laws of 2007 and
3 section 2 of chapter 7 of the laws of 2008, is amended to read as
4 follows:
5 (c) It shall be the duty of the fiscal officer, as defined in this
6 section, to ascertain and determine the schedules of supplements to be
7 provided and wages to be paid workers, laborers and mechanics on such
8 public work, prior to the time of the advertisement for bids, and such
9 schedules shall be annexed to and form a part of the specifications for
10 the work. Such fiscal officer shall file with the department having
11 jurisdiction such schedules prior to the time of the commencement of the
12 advertisement for bids on all public works proposed to be constructed.
13 IF THE FISCAL OFFICER CANNOT ASCERTAIN OR DETERMINE SUCH SCHEDULES OR
14 WAGES, OR DISTINGUISH BETWEEN THE CLASSIFICATIONS OF WORKERS ON SUCH
15 PUBLIC WORK, IT SHALL BE THE DUTY OF THE FISCAL OFFICER TO REJECT ANY
16 CONTRACT ASSOCIATED WITH THE ADVERTISEMENT FOR BIDS. The term "contract"
17 as used in this article also shall include reconstruction and repair of
18 any such public work, and any public work performed under a lease,
19 permit or other agreement pursuant to which the department of jurisdic-
20 tion grants the responsibility of contracting for such public work to
21 any third party proposing to perform such work to which the provisions

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

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1 of this article would apply had the department of jurisdiction
2 contracted directly for its performance, or where there is no lease,
3 permit or other agreement and ownership of a public work is intended to
4 be assumed by such public entity at any time subsequent to completion of
5 the public work.

6 S 2. Paragraph (c) of subdivision 3 of section 220 of the labor law,
7 as amended by section 2 of chapter 7 of the laws of 2008, is amended to
8 read as follows:

9 (c) It shall be the duty of the fiscal officer, as defined in this
10 section, to ascertain and determine the schedules of supplements to be
11 provided and wages to be paid workmen, laborers and mechanics on such
12 public work, prior to the time of the advertisement for bids, and such
13 schedules shall be annexed to and form a part of the specifications for
14 the work. Such fiscal officer shall file with the department having
15 jurisdiction such schedules to the time of the commencement of the
16 advertisement for bids on all public works proposed to be constructed.
17 IF THE FISCAL OFFICER CANNOT ASCERTAIN OR DETERMINE SUCH SCHEDULES OR
18 WAGES, OR DISTINGUISH BETWEEN THE CLASSIFICATIONS OF WORKERS ON SUCH
19 PUBLIC WORK, IT SHALL BE THE DUTY OF THE FISCAL OFFICER TO REJECT ANY
20 CONTRACT ASSOCIATED WITH THE ADVERTISEMENT FOR BIDS. The term "contract"
21 as used in this subdivision also shall include reconstruction and repair
22 of any such public work.

23 S 2-a. Section 222 of the labor law is amended by adding a new subdi-
24 vision 3 to read as follows:

25 3. FOR PURPOSES OF THIS SECTION ONLY, JOB ORDER CONTRACTING WILL BE
26 PERMISSIBLE WHERE THE CONTRACTOR HAS ENTERED INTO A PROJECT LABOR AGREE-
27 MENT. "JOB ORDER CONTRACTING" IS A COMPETITIVE BID, INDEFINITE QUANTITY,
28 FIXED PRICE, MULTI-TASK CONTRACT, WHERE A BASE CONTRACT IS AWARDED WITH
29 PRE-ESTABLISHED TASKS AND PRICES, SPECIFICATIONS AND GENERAL CONTRACT
30 CONDITIONS. CONTRACTORS ARE PERMITTED TO BID BY SUBMITTING A COEFFICIENT
31 OR COEFFICIENTS, FOR A JOB ORDER CONTRACT, BASED ON A UNIT PRICE BOOK,
32 WHICH CONTAINS A LIST OF ALL TASKS THAT MAY BE PERFORMED USING THE BASE
33 CONTRACT.

34 S 3. Subdivision 1 of section 103 of the general municipal law, as
35 amended by section 1 of part FF of chapter 56 of the laws of 2010, is
36 amended to read as follows:

37 1. Except as otherwise expressly provided by an act of the legislature
38 or by a local law adopted prior to September first, nineteen hundred
39 fifty-three, all contracts for public work involving an expenditure of
40 more than thirty-five thousand dollars and all purchase contracts
41 involving an expenditure of more than twenty thousand dollars, shall be
42 awarded by the appropriate officer, board or agency of a political
43 subdivision or of any district therein including but not limited to a
44 soil conservation district, to the lowest responsible bidder furnishing
45 the required security after advertisement for sealed bids in the manner
46 provided by this section. In any case where a responsible bidder's gross
47 price is reducible by an allowance for the value of used machinery,
48 equipment, apparatus or tools to be traded in by a political subdivi-
49 sion, the gross price shall be reduced by the amount of such allowance,
50 for the purpose of determining the low bid. In cases where two or more
51 responsible bidders furnishing the required security submit identical
52 bids as to price, such officer, board or agency may award the contract
53 to any of such bidders. Such officer, board or agency may, in his or her
54 or its discretion, reject all bids and readvertise for new bids in the
55 manner provided by this section. ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK
56 CONTRACTS MUST BE FOR A FIXED DOLLAR AMOUNT. In determining whether a

1 purchase is an expenditure within the discretionary threshold amounts
2 established by this subdivision, the officer, board or agency of a poli-
3 tical subdivision or of any district therein shall consider the reason-
4 ably expected aggregate amount of all purchases of the same commodities,
5 services or technology to be made within the twelve-month period
6 commencing on the date of purchase. Purchases of commodities, services
7 or technology shall not be artificially divided for the purpose of
8 satisfying the discretionary buying thresholds established by this
9 subdivision. A change to or a renewal of a discretionary purchase shall
10 not be permitted if the change or renewal would bring the reasonably
11 expected aggregate amount of all purchases of the same commodities,
12 services or technology from the same provider within the twelve-month
13 period commencing on the date of the first purchase to an amount greater
14 than the discretionary buying threshold amount. For purposes of this
15 section, "sealed bids", as that term applies to purchase contracts,
16 shall include bids submitted in an electronic format including
17 submission of the statement of non-collusion required by section one
18 hundred three-d of this article, provided that the governing board of
19 the political subdivision or district, by resolution, has authorized the
20 receipt of bids in such format. Submission in electronic format may,
21 for technology contracts only, be required as the sole method for the
22 submission of bids. Bids submitted in an electronic format shall be
23 transmitted by bidders to the receiving device designated by the poli-
24 tical subdivision or district. Any method used to receive electronic
25 bids shall comply with article three of the state technology law, and
26 any rules and regulations promulgated and guidelines developed there-
27 under and, at a minimum, must (a) document the time and date of receipt
28 of each bid received electronically; (b) authenticate the identity of
29 the sender; (c) ensure the security of the information transmitted; and
30 (d) ensure the confidentiality of the bid until the time and date estab-
31 lished for the opening of bids. The timely submission of an electronic
32 bid in compliance with instructions provided for such submission in the
33 advertisement for bids and/or the specifications shall be the responsi-
34 bility solely of each bidder or prospective bidder. No political subdi-
35 vision or district therein shall incur any liability from delays of or
36 interruptions in the receiving device designated for the submission and
37 receipt of electronic bids.

38 S 4. Subdivision 1 of section 103 of the general municipal law, as
39 amended by section 2 of part FF of chapter 56 of the laws of 2010, is
40 amended to read as follows:

41 1. Except as otherwise expressly provided by an act of the legislature
42 or by a local law adopted prior to September first, nineteen hundred
43 fifty-three, all contracts for public work involving an expenditure of
44 more than thirty-five thousand dollars and all purchase contracts
45 involving an expenditure of more than twenty thousand dollars, shall be
46 awarded by the appropriate officer, board or agency of a political
47 subdivision or of any district therein including but not limited to a
48 soil conservation district, to the lowest responsible bidder furnishing
49 the required security after advertisement for sealed bids in the manner
50 provided by this section. ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK
51 CONTRACTS MUST BE FOR A FIXED DOLLAR AMOUNT. In determining whether a
52 purchase is an expenditure within the discretionary threshold amounts
53 established by this subdivision, the officer, board or agency of a poli-
54 tical subdivision or of any district therein shall consider the reason-
55 ably expected aggregate amount of all purchases of the same commodities,
56 services or technology to be made within the twelve-month period

1 commencing on the date of purchase. Purchases of commodities, services
2 or technology shall not be artificially divided for the purpose of
3 satisfying the discretionary buying thresholds established by this
4 subdivision. A change to or a renewal of a discretionary purchase shall
5 not be permitted if the change or renewal would bring the reasonably
6 expected aggregate amount of all purchases of the same commodities,
7 services or technology from the same provider within the twelve-month
8 period commencing on the date of the first purchase to an amount greater
9 than the discretionary buying threshold amount. In any case where a
10 responsible bidder's gross price is reducible by an allowance for the
11 value of used machinery, equipment, apparatus or tools to be traded in
12 by a political subdivision, the gross price shall be reduced by the
13 amount of such allowance, for the purpose of determining the low bid. In
14 cases where two or more responsible bidders furnishing the required
15 security submit identical bids as to price, such officer, board or agen-
16 cy may award the contract to any of such bidders. Such officer, board or
17 agency may, in his, her or its discretion, reject all bids and readver-
18 tise for new bids in the manner provided by this section.

19 S 5. Subdivision 2 of section 103 of the general municipal law, as
20 amended by section 5 of part X of chapter 62 of the laws of 2003, is
21 amended to read as follows:

22 2. Advertisement for bids shall be published in the official newspaper
23 or newspapers, if any, or otherwise in a newspaper or newspapers desig-
24 nated for such purpose. Such advertisement shall contain a statement of
25 the time when and place where all bids received pursuant to such notice
26 will be publicly opened and read, and the designation of the receiving
27 device if the political subdivision or district has authorized the
28 receipt of bids in an electronic format. SUCH ADVERTISEMENT SHALL
29 DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK
30 TO BE PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF
31 SUBDIVISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. Such
32 board or agency may by resolution designate any officer or employee to
33 open the bids at the time and place specified in the notice. Such desig-
34 nee shall make a record of such bids in such form and detail as the
35 board or agency shall prescribe and present the same at the next regular
36 or special meeting of such board or agency. All bids received shall be
37 publicly opened and read at the time and place so specified. At least
38 five days shall elapse between the first publication of such advertise-
39 ment and the date so specified for the opening and reading of bids.

40 S 6. Subdivision 2 of section 103 of the general municipal law, as
41 amended by chapter 296 of the laws of 1958, is amended to read as
42 follows:

43 2. Advertisement for bids shall be published in the official newspaper
44 or newspapers, if any, or otherwise in a newspaper or newspapers desig-
45 nated for such purpose. Such advertisement shall contain a statement of
46 the time when and place where all bids received pursuant to such notice
47 will be publicly opened and read. SUCH ADVERTISEMENT SHALL DESCRIBE
48 SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE
49 PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDI-
50 VISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. Such board
51 or agency may by resolution designate any officer or employee to open
52 the bids at the time and place specified in the notice. Such designee
53 shall make a record of such bids in such form and detail as the board or
54 agency shall prescribe and present the same at the next regular or
55 special meeting of such board or agency. All bids received shall be
56 publicly opened and read at the time and place so specified. At least

1 five days shall elapse between the first publication of such advertise-
2 ment and the date so specified for the opening and reading of bids.

3 S 7. The first undesignated paragraph of section 135 of the state
4 finance law, as amended by section 3 of part MM of chapter 57 of the
5 laws of 2008, is amended to read as follows:

6 Such specifications must be so drawn as to permit separate and inde-
7 pendent bidding upon each of the above three subdivisions of work. All
8 contracts hereafter awarded by the state or a department, board, commis-
9 sioner or officer thereof, for the erection, construction or alteration
10 of buildings, or any part thereof, shall award the three subdivisions of
11 the above specified work separately to responsible and reliable persons,
12 firms or corporations engaged in these classes of work. A contract for
13 one or more buildings in any project shall be awarded to the lowest
14 responsible bidder for all the buildings included in the specifications.
15 ALL SUCH SPECIFICATIONS ISSUED PURSUANT TO THIS ARTICLE SHALL DESCRIBE
16 SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE
17 PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDI-
18 VISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. EACH BIDDER
19 FOR ANY PROJECT UNDER THIS ARTICLE SHALL SUBMIT BIDS FOR A FIXED DOLLAR
20 AMOUNT.

21 S 8. Subdivision 2 of section 161 of the state finance law is amended
22 by adding a new paragraph o to read as follows:

23 O. CONSULT WITH AND ADVISE THE COMMISSIONER ON THE USE OF JOB ORDER
24 CONTRACTING WITH RESPECT TO PUBLIC WORK PROJECTS WHICH MUST COMPLY WITH
25 ARTICLE EIGHT OF THE LABOR LAW.

26 S 9. Paragraph a of subdivision 6 of section 2590-p of the education
27 law, as added by chapter 738 of the laws of 1988, is amended to read as
28 follows:

29 a. For each project included in an approved five-year educational
30 facilities capital plan, the chancellor shall develop a detailed scope
31 of the project, which shall include the following: (i) the purposes and
32 public to be served, (ii) the programs to be conducted in the facility,
33 (iii) the gross amounts of space and bulk for any building or structure,
34 (iv) identification of the intent to use architectural, engineering or
35 other consultant services and estimated fees for such consultant
36 services, (v) the schedule of design and construction, (vi) the total
37 estimated project costs, including costs for site acquisition, prepara-
38 tion and tenant relocation, design, construction and equipment, (vii)
39 maximum estimated expenditures for the project for each fiscal year
40 until its completion, (viii) costs associated with maintenance and oper-
41 ation of the physical plant and (ix) such other information as the chan-
42 cellor shall specify. In the event, a project consists of a program
43 element without identification of the particular education facility at
44 which such project is to be performed, the detailed scope of the project
45 shall specify the nature of the work to be performed, applicable price
46 and quality standards, a list of the schools eligible for such work,
47 annual performance targets and the total estimated costs of such project
48 during each fiscal year until its completion. ALL SUCH ESTIMATED COSTS
49 AND PRICES SHALL BE FOR A FIXED DOLLAR AMOUNT.

50 S 10. Paragraph d of subdivision 6 of section 2590-p of the education
51 law, as amended by chapter 91 of the laws of 2002, is amended to read as
52 follows:

53 d. For projects to be funded pursuant to subdivision four of this
54 section, the chancellor shall transmit the detailed scope of each such
55 project to the director of management and budget of the city for
56 approval.

1 (i) Except as provided in paragraph b of this subdivision, no expenses
2 shall be incurred by the city board or the authority for any such
3 project prior to approval of the detailed scope of any such project.
4 SUCH DETAILED SCOPE OF THE PROJECT SHALL DESCRIBE SPECIFICALLY THE
5 NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE PERFORMED.

6 (ii) No detailed scope of project shall be approved unless the total
7 estimated costs of such project, together with the aggregate estimated
8 costs of all projects for which a detailed scope has theretofore been
9 approved, are within city capital budget appropriations available there-
10 for. A detailed scope of project that is not disapproved by the director
11 of management and budget within thirty days of its submission shall be
12 deemed approved. To the extent the director disapproves all or part of a
13 scope, he or she shall set forth in writing the reasons therefor.

14 (iii) Upon approval of the detailed scope of project, the chancellor
15 shall refer such project to the New York city school construction
16 authority for implementation in accordance with an agreement between the
17 authority and the city board and shall transmit the approved project
18 scope to the comptroller, whereupon the total estimated costs of such
19 project as set forth in such approved project scope shall be available
20 for expenditure. ALL SUCH ESTIMATED COSTS SHALL BE FOR A FIXED DOLLAR
21 AMOUNT.

22 (iv) Approval of the director of management and budget shall be
23 required for any material change in the approved detailed scope of
24 project or for any increase in the total cost of such project in excess
25 of any reserve provided in the approved detailed scope of project. Such
26 approval shall be given or deemed given in the manner provided herein.

27 (v) The provisions of this paragraph shall not apply to emergency
28 projects undertaken pursuant to paragraph h of subdivision two of this
29 section, the estimated costs of which, together with the costs of other
30 projects undertaken pursuant to said paragraph h, does not exceed the
31 amount set forth in the educational facilities capital plan for activ-
32 ities pursuant to paragraph h of subdivision two of this section.

33 S 11. Paragraph d of subdivision 6 of section 2590-p of the education
34 law, as added by chapter 738 of the laws of 1988, is amended to read as
35 follows:

36 d. For projects to be funded pursuant to subdivision four of this
37 section, the chancellor shall transmit the detailed scope of each such
38 project to the director of management and budget of the city for
39 approval.

40 (i) Except as provided in paragraph b of this subdivision, no expenses
41 shall be incurred by the city board or the authority for any such
42 project prior to approval of the detailed scope of any such project.
43 SUCH DETAILED SCOPE OF THE PROJECT SHALL DESCRIBE SPECIFICALLY THE
44 NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE PERFORMED.

45 (ii) No detailed scope of project shall be approved unless the total
46 estimated costs of such project, together with the aggregate estimated
47 costs of all projects for which a detailed scope has theretofore been
48 approved, are within city capital budget appropriations available there-
49 for. A detailed scope of project that is not disapproved by the director
50 of management and budget within thirty days of its submission shall be
51 deemed approved. To the extent the director disapproves all or part of a
52 scope, he shall set forth in writing the reasons therefor.

53 (iii) Upon approval of the detailed scope of project, the chancellor
54 shall refer such project to the New York city school construction
55 authority for implementation in accordance with an agreement between the
56 authority and the city board and shall transmit the approved project

1 scope to the comptroller whereupon the total estimated costs of such
2 project as set forth in such approved project scope shall be available
3 for expenditure. ALL SUCH ESTIMATED COSTS SHALL BE FOR A FIXED DOLLAR
4 AMOUNT.

5 (iv) Approval of the director of management and budget shall be
6 required for any material change in the approved detailed scope of
7 project or for any increase in the total cost of such project in excess
8 of any reserve provided in the approved detailed scope of project. Such
9 approval shall be given or deemed given in the manner provided herein.

10 (v) The provisions of this paragraph shall not apply to emergency
11 projects undertaken pursuant to paragraph h of subdivision two of this
12 section, the estimated costs of which, together with the costs of other
13 projects undertaken pursuant to said paragraph h, does not exceed the
14 amount set forth in the educational facilities capital plan for activ-
15 ities pursuant to paragraph h of subdivision two of this section.

16 S 12. This act shall take effect on the ninetieth day after it shall
17 have become a law; provided, however, that:

18 (a) the amendments to paragraph (c) of subdivision 3 of section 220 of
19 the labor law made by section one of this act shall be subject to the
20 expiration and reversion of such paragraph pursuant to section 5 of
21 chapter 678 of the laws of 2007, as amended, when upon such date the
22 provisions of section two of this act shall take effect;

23 (b) the amendments to subdivisions 1 and 2 of section 103 of the
24 general municipal law made by sections three and five of this act shall
25 be subject to the expiration and reversion of such subdivisions pursuant
26 to subdivision (a) of section 41 of part X of chapter 62 of the laws of
27 2003, as amended, when upon such date the provisions of sections four
28 and six of this act, respectively, shall take effect; and

29 (c) the amendments to paragraph d of subdivision 6 of section 2590-p
30 of the education law made by section ten of this act shall be subject to
31 the expiration and reversion of such paragraph pursuant to section 34 of
32 chapter 91 of the laws of 2002, as amended, when upon such date the
33 provisions of section eleven of this act shall take effect.