

5149--E

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sens. BONACIC, ADDABBO -- 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 -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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 -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, the state finance law and the general municipal law, in relation to labor performed under certain public work contracts

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

1 Section 1. Subdivision 5 of section 220 of the labor law is amended by
2 adding a new paragraph m to read as follows:
3 M. "JOB ORDER CONTRACT" SHALL MEAN A COMPETITIVE BID, INDEFINITE QUAN-
4 TITY, FIXED PRICE, MULTI-TASK CONTRACT, WHERE A BASE CONTRACT IS AWARDED
5 WITH PRE-ESTABLISHED TASKS AND PRICES, SPECIFICATIONS AND GENERAL
6 CONTRACT CONDITIONS. CONTRACTORS ARE PERMITTED TO BID BY SUBMITTING A
7 COEFFICIENT OR COEFFICIENTS FOR A JOB ORDER CONTRACT BASED ON A UNIT
8 PRICE BOOK, WHICH CONTAINS A LIST OF ALL TASKS THAT MAY BE PERFORMED AS
9 PART OF THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT. SUCH
10 CONTRACTS MUST BE FILED WITH THE COMMISSIONER BY THE DEPARTMENT OF
11 JURISDICTION AND MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER SUCH
12 CONTRACT IS PURSUANT TO THIS SECTION.
13 S 2. The state finance law is amended by adding a new section 148 to
14 read as follows:

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

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1 S 148. JOB ORDER CONTRACTS. 1. "JOB ORDER CONTRACT", SHALL HAVE THE
2 SAME MEANING AS SET FORTH IN PARAGRAPH M OF SUBDIVISION FIVE OF SECTION
3 TWO HUNDRED TWENTY OF THE LABOR LAW.

4 2. THE JOB ORDER CONTRACT MUST HAVE A DEFINED SCOPE OF WORK, WHICH
5 INCLUDES:

6 A. A LIMITATION TO ONE OF THE GEOGRAPHIC REGIONS COMMONLY REFERRED TO
7 AS THE CAPITAL DISTRICT, MOHAWK VALLEY, CENTRAL NEW YORK, GENESEE
8 VALLEY, WESTERN NEW YORK, SOUTHERN TIER, NORTH COUNTRY, LONG ISLAND OR
9 NEW YORK CITY;

10 B. A DEFINED TRADE OF EITHER:

11 (I) BASIC TRADES, INCLUDING CARPENTERS, LABORERS AND BRICKLAYERS,

12 (II) PLUMBING AND GAS FITTING,

13 (III) STEAM HEATING, HOT WATER HEATING, VENTILATING AND AIR CONDITION-
14 ING APPARATUS,

15 (IV) ELECTRIC WIRING AND STANDARD ILLUMINATING FIXTURES,

16 (V) ROOFING,

17 (VI) WELDING,

18 (VII) IRONWORK,

19 (VIII) CONCRETE FINISHING, OR

20 (IX) PAINTING AND PLASTERING; AND

21 C. A DETAILED DESCRIPTION OF THE WORK TO BE PERFORMED UNDER THE BASE
22 CONTRACT, A LIST OF THE TASKS NECESSARY TO COMPLETE THE WORK TO BE
23 PERFORMED UNDER THE BASE CONTRACT AND THE TRADE CLASSIFICATIONS OF THE
24 WORKERS, MECHANICS AND LABORERS WHO WILL PERFORM EACH OF THE LISTED
25 TASKS IN THE BASE CONTRACT.

26 3. THE DEFINED SCOPE OF WORK TO BE PERFORMED UNDER THE BASE CONTRACT
27 MUST NOT BE OVERLY BROAD SO AS TO PREVENT THE CONTRACTOR FROM MAKING AN
28 INFORMED BID DURING THE COMPETITIVE BID PROCESS. THE CONTRACTING ENTITY
29 MUST LIMIT THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT TO THOSE
30 PRE-ESTABLISHED TASKS AND PRICES REFERRED TO IN THE GENERAL CONTRACT
31 CONDITIONS.

32 4. BEFORE SOLICITING BIDS FOR THE BASE CONTRACT, THE CONTRACTING ENTI-
33 TY SHALL FILE ALL INFORMATION REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH
34 A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW
35 WITH THE FISCAL OFFICER. THE CONTRACTING ENTITY MAY NOT SOLICIT BIDS FOR
36 THE CONTRACT UNTIL ALL REQUIREMENTS OF SUBPARAGRAPH (I) OF PARAGRAPH A
37 OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW
38 HAVE BEEN SATISFIED.

39 5. THE COST OF A JOB ORDER CONTRACT MAY NOT EXCEED FIVE HUNDRED THOU-
40 SAND DOLLARS. SUCH CONTRACT IS LIMITED TO ONE YEAR AND MAY BE RENEWED
41 FOR AN ADDITIONAL TWELVE MONTHS TWICE SO LONG AS THE FIVE HUNDRED THOU-
42 SAND DOLLAR THRESHOLD HAS NOT BEEN REACHED. IT IS IMPERMISSIBLE TO
43 SUBDIVIDE A CONTRACT INTO SEPARATE CONTRACTS IN ORDER TO MEET THE
44 REQUIREMENTS OF THIS SUBDIVISION. THE RESTRICTIONS IN THIS SUBDIVISION
45 SHALL NOT APPLY WHERE THE PUBLIC OWNER REQUIRES A PROJECT LABOR AGREE-
46 MENT CONSISTENT WITH PROVISIONS OF SECTION TWO HUNDRED TWENTY-TWO OF THE
47 LABOR LAW.

48 6. THE JOB ORDER CONTRACT AND ALL SUBCONTRACTS ASSOCIATED WITH SUCH
49 JOB ORDER CONTRACT MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER
50 SUCH CONTRACTS IS PURSUANT TO SECTION TWO HUNDRED TWENTY OF THE LABOR
51 LAW.

52 7. THESE REQUIREMENTS APPLY TO ALL JOB ORDER CONTRACTS ISSUED BY A
53 STATE AGENCY, AS DEFINED BY SUBDIVISION THREE OF SECTION TWO-A OF THIS
54 CHAPTER, A COVERED AUTHORITY, AS DEFINED BY SUBDIVISION SIX OF SECTION
55 TWO-A OF THIS CHAPTER, THE NEW YORK CITY HOUSING AUTHORITY, ESTABLISHED
56 UNDER TITLE ONE OF ARTICLE THIRTEEN OF THE PUBLIC HOUSING LAW, AND THE

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY, ESTABLISHED UNDER TITLE SIX OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW. ALL SUCH ENTITIES MUST LIMIT ASSIGNMENT UNDER CONTRACTS ISSUED PURSUANT TO THIS SECTION TO A MINORITY PORTION OF ITS ANNUAL CAPITAL BUDGET, IF SUCH BUDGET EXISTS.

8. IF AN ENTITY DESCRIBED IN SUBDIVISION SEVEN OF THIS SECTION SEEKS A THIRD PARTY CONSULTANT TO ASSIST, IN ANY MANNER, WITH THE BIDDING AND/OR IMPLEMENTATION OF A JOB ORDER CONTRACT, SUCH THIRD PARTY CONSULTANT MUST BE SELECTED PURSUANT TO A COMPETITIVE BID PROCESS.

S 3. The general municipal law is amended by adding a new section 103-h to read as follows:

S 103-H. JOB ORDER CONTRACTS. 1. "JOB ORDER CONTRACT", SHALL HAVE THE SAME MEANING AS SET FORTH IN PARAGRAPH M OF SUBDIVISION FIVE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW.

2. THE JOB ORDER CONTRACT MUST HAVE A DEFINED SCOPE OF WORK, WHICH INCLUDES:

A. A LIMITATION TO ONE OF THE GEOGRAPHIC REGIONS COMMONLY REFERRED TO AS THE CAPITAL DISTRICT, MOHAWK VALLEY, CENTRAL NEW YORK, GENESEE VALLEY, WESTERN NEW YORK, SOUTHERN TIER, NORTH COUNTRY, LONG ISLAND OR NEW YORK CITY;

B. A DEFINED TRADE OF EITHER:

- (I) BASIC TRADES, INCLUDING CARPENTERS, LABORERS AND BRICKLAYERS,
- (II) PLUMBING AND GAS FITTING,
- (III) STEAM HEATING, HOT WATER HEATING, VENTILATING AND AIR CONDITIONING APPARATUS,
- (IV) ELECTRIC WIRING AND STANDARD ILLUMINATING FIXTURES,
- (V) ROOFING,
- (VI) WELDING,
- (VII) IRONWORK,
- (VIII) CONCRETE FINISHING, OR
- (IX) PAINTING AND PLASTERING; AND

C. A DETAILED DESCRIPTION OF THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT, A LIST OF THE TASKS NECESSARY TO COMPLETE THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT AND THE TRADE CLASSIFICATIONS OF THE WORKERS, MECHANICS AND LABORERS WHO WILL PERFORM EACH OF THE LISTED TASKS IN THE BASE CONTRACT.

3. THE DEFINED SCOPE OF WORK TO BE PERFORMED UNDER THE BASE CONTRACT MUST NOT BE OVERLY BROAD SO AS TO PREVENT THE CONTRACTOR FROM MAKING AN INFORMED BID DURING THE COMPETITIVE BID PROCESS. THE CONTRACTING ENTITY MUST LIMIT THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT TO THOSE PRE-ESTABLISHED TASKS AND PRICES REFERRED TO IN THE GENERAL CONTRACT CONDITIONS.

4. BEFORE SOLICITING BIDS FOR THE BASE CONTRACT, THE CONTRACTING ENTITY SHALL FILE ALL INFORMATION REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW WITH THE FISCAL OFFICER. THE CONTRACTING ENTITY MAY NOT SOLICIT BIDS FOR THE BASE CONTRACT UNTIL ALL REQUIREMENTS OF SUBPARAGRAPH (I) OF PARAGRAPH A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW HAVE BEEN SATISFIED.

5. THE COST OF A JOB ORDER CONTRACT MAY NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS. SUCH CONTRACT IS LIMITED TO ONE YEAR AND MAY BE RENEWED FOR AN ADDITIONAL TWELVE MONTHS TWICE SO LONG AS THE FIVE HUNDRED THOUSAND DOLLAR THRESHOLD HAS NOT BEEN REACHED. IT IS IMPERMISSIBLE TO SUBDIVIDE A CONTRACT INTO SEPARATE CONTRACTS IN ORDER TO MEET THE REQUIREMENTS OF THIS SUBDIVISION. THE RESTRICTIONS IN THIS SUBDIVISION SHALL NOT APPLY WHERE THE PUBLIC OWNER REQUIRES A PROJECT LABOR AGREE-

1 MENT CONSISTENT WITH PROVISIONS OF SECTION TWO HUNDRED TWENTY-TWO OF THE
2 LABOR LAW.

3 6. THE JOB ORDER CONTRACT AND ALL SUBCONTRACTS ASSOCIATED WITH SUCH
4 JOB ORDER CONTRACT MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER
5 SUCH CONTRACTS IS PURSUANT TO SECTION TWO HUNDRED TWENTY OF THE LABOR
6 LAW.

7 7. THESE REQUIREMENTS APPLY TO ALL POLITICAL SUBDIVISIONS. ALL SUCH
8 POLITICAL SUBDIVISIONS MUST LIMIT ASSIGNMENTS UNDER CONTRACTS ISSUED
9 PURSUANT TO THIS SECTION TO A MINORITY PORTION OF ITS ANNUAL CAPITAL
10 BUDGET, IF SUCH BUDGET EXISTS.

11 8. IF A POLITICAL SUBDIVISION SEEKS A THIRD PARTY CONSULTANT TO
12 ASSIST, IN ANY MANNER, WITH THE BIDDING AND/OR IMPLEMENTATION OF A JOB
13 ORDER CONTRACT, SUCH THIRD PARTY CONSULTANT MUST BE SELECTED PURSUANT TO
14 A COMPETITIVE BID PROCESS.

15 S 4. This act shall take effect immediately and shall apply to all job
16 order contracts solicited or renewed on or after such effective date.