S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sens. BONACIC, ADDABBO, SAVINO -- 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 -- 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:

Section 1. Subdivision 5 of section 220 of the labor law is amended by adding a new paragraph m to read as follows:

M. "JOB ORDER CONTRACT" SHALL MEAN A COMPETITIVE BID, INDEFINITE QUANTITY, FIXED PRICE, MULTI-TASK CONTRACT, WHERE A BASE CONTRACT IS AWARDED WITH PRE-ESTABLISHED TASKS AND PRICES, SPECIFICATIONS AND GENERAL CONTRACT CONDITIONS. CONTRACTORS ARE PERMITTED TO BID BY SUBMITTING A COEFFICIENT OR COEFFICIENTS FOR A JOB ORDER CONTRACT BASED ON A UNIT PRICE BOOK, WHICH CONTAINS A LIST OF ALL TASKS THAT MAY BE PERFORMED AS PART OF THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT. SUCH CONTRACTS MUST BE FILED WITH THE COMMISSIONER BY THE DEPARTMENT OF JURISDICTION AND MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER SUCH CONTRACT IS PURSUANT TO THIS SECTION.

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

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S 2. The state finance law is amended by adding a new section 148 to read as follows:

S 148. 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, HUDSON VALLEY, CENTRAL NEW YORK, FINGER LAKES, WESTERN NEW YORK, SOUTHERN TIER, NORTH COUNTRY, LONG ISLAND OR NEW YORK CITY;

B. IDENTIFICATION OF TRADES RELEVANT FOR THE SPECIFIC SCOPE OF WORK TO BE PERFORMED, INCLUDING BUT NOT LIMITED TO:

(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 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 AGREEMENT CONSISTENT WITH PROVISIONS OF SECTION TWO HUNDRED TWENTY-TWO OF THE LABOR LAW.

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

7. THESE REQUIREMENTS APPLY TO ALL JOB ORDER CONTRACTS ISSUED BY A STATE AGENCY, AS DEFINED BY SUBDIVISION THREE OF SECTION TWO-A OF THIS

CHAPTER, A COVERED AUTHORITY, AS DEFINED BY SUBDIVISION SIX OF SECTION TWO-A OF THIS CHAPTER, THE NEW YORK CITY HOUSING AUTHORITY, ESTABLISHED 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, HUDSON VALLEY, CENTRAL NEW YORK, FINGER LAKES, WESTERN NEW YORK, SOUTHERN TIER, NORTH COUNTRY, LONG ISLAND OR NEW YORK CITY;

B. IDENTIFICATION OF TRADES RELEVANT FOR THE SPECIFIC SCOPE OF WORK TO BE PERFORMED, INCLUDING BUT NOT LIMITED TO:

(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 AGREEMENT CONSISTENT WITH PROVISIONS OF SECTION TWO HUNDRED TWENTY-TWO OF THE LABOR LAW.

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

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

8. IF A POLITICAL SUBDIVISION 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 4. This act shall take effect immediately and shall apply to all job order contracts solicited or renewed on or after such effective date.