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

2760

2013-2014 Regular Sessions

I N S E N A T E

January 23, 2013

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, the state finance law, and the labor law, in relation to project labor agreements for public work projects

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

Section 1. This act shall be known and may be cited as the "public construction savings act".

S 2. Subdivision 1 of section 103 of the general municipal law, as amended by section 1 of chapter 2 of the laws of 2012, is amended to read as follows:

1. Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section, provided, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section one hundred sixty-three of the state finance law, to a responsive and responsible bidder or offerer in the manner provided by this section except that in a political subdivision other than a city with a population of one million inhabitants or more or any district, board or agency with jurisdiction exclusively therein the use of best value for awarding a purchase contract or purchase

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

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contracts must be authorized by local law or, in the case of a district corporation, school district or board of cooperative educational services, by rule, regulation or resolution adopted at a public meeting. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his or her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. For purposes of this section, "sealed bids" and "sealed offers", as that term applies to purchase contracts, (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) shall include bids and offers submitted in an electronic format including submission of the statement of non-collusion required by section one hundred three-d of this article, provided that the governing board of the political subdivision or district, by resolution, has authorized the receipt of bids and offers in such format. Submission in electronic format may, for technology contracts only, be required as the sole method for the submission of bids and offers. Bids and offers submitted in an electronic format shall be transmitted by bidders and offerers to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids and offers shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must (a) document the time and date of receipt of each bid and offer received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or offers. The timely submission of an electronic bid or offer in compliance with instructions provided for such submission in the advertisement for bids or offers and/or the specifications shall be the responsibility solely of each bidder or offerer or prospective bidder or offerer. No political subdivision or district therein shall incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic bids and offers. A CONTRACTOR BIDDING ON A REQUEST FOR PROPOSAL ISSUED BY THE APPROPRIATE OFFICER, BOARD OR AGENCY OF A POLITICAL SUBDIVISION

OR OF ANY DISTRICT THEREIN, INCLUDING BUT NOT LIMITED TO A SOIL CONSERVATION DISTRICT, OFFERING AN OPTIONAL PROJECT LABOR AGREEMENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWO HUNDRED TWENTY-TWO OF THE LABOR LAW, MAY SUBMIT A BID THAT DOES NOT INCLUDE A PROJECT LABOR AGREEMENT, AND SUCH CONTRACT FOR PUBLIC WORK SHALL BE AWARDED TO THE CONTRACTOR WITH THE LOW BID REGARDLESS OF WHETHER A PROJECT LABOR AGREEMENT WAS INCLUDED IN A CONTRACTOR'S BID PROPOSAL.

S 3. Subdivision 1 of section 103 of the general municipal law, as amended by section 2 of chapter 2 of the laws of 2012, is amended to read as follows:

1. Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section, provided, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section one hundred sixty-three of the state finance law, to a responsive and responsible bidder or offerer in the manner provided by this section except that in a political subdivision other than a city with a population of one million inhabitants or more or any district, board or agency with jurisdiction exclusively therein the use of best value of awarding a purchase contract or purchase contracts must be authorized by local law or, in the case of a district corporation, school district or board of cooperative educational services, by rule, regulation or resolution adopted at a public meeting. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the low bid or best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his, her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section. A CONTRACTOR

BIDDING ON A REQUEST FOR PROPOSAL ISSUED BY THE APPROPRIATE OFFICER, BOARD OR AGENCY OF A POLITICAL SUBDIVISION OR OF ANY DISTRICT THEREIN, INCLUDING BUT NOT LIMITED TO A SOIL CONSERVATION DISTRICT, OFFERING AN OPTIONAL PROJECT LABOR AGREEMENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWO HUNDRED TWENTY-TWO OF THE LABOR LAW, MAY SUBMIT A BID THAT DOES NOT INCLUDE A PROJECT LABOR AGREEMENT, AND SUCH CONTRACT FOR PUBLIC WORK SHALL BE AWARDED TO THE CONTRACTOR WITH THE LOW BID REGARDLESS OF WHETHER A PROJECT LABOR AGREEMENT WAS INCLUDED IN A CONTRACTOR'S BID PROPOSAL.

S 4. The state finance law is amended by adding a new section 148 to read as follows:

S 148. PROJECT LABOR AGREEMENTS. A CONTRACTOR BIDDING ON A REQUEST FOR PROPOSAL ISSUED BY AN OFFICER, BOARD, DEPARTMENT, COMMISSION OR COMMISSIONS FOR THE ERECTION, CONSTRUCTION OR ALTERATION OF BUILDINGS FOR THE STATE, OFFERING AN OPTIONAL PROJECT LABOR AGREEMENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWO HUNDRED TWENTY-TWO OF THE LABOR LAW, MAY SUBMIT A BID THAT DOES NOT INCLUDE A PROJECT LABOR AGREEMENT AND SUCH CONTRACT FOR PUBLIC WORK SHALL BE AWARDED TO THE CONTRACTOR WITH THE LOW BID REGARDLESS OF WHETHER A PROJECT LABOR AGREEMENT WAS INCLUDED IN A CONTRACTOR'S BID PROPOSAL.

S 5. Paragraph (a) of subdivision 2 of section 222 of the labor law, as added by section 18 of part MM of chapter 57 of the laws of 2008, is amended to read as follows:

(a) Any agency, board, department, commission or officer of the state of New York, or of any political subdivision thereof as defined in section one hundred of the general municipal law, municipal corporation as defined in section sixty-six of the general construction law, public benefit corporation, or local or state authority as defined in section two of the public authorities law having jurisdiction over the public work may NOT require[a contractor awarded a contract, subcontract, lease, grant, bond, covenant or other agreement for a project to enter into], BUT MAY OFFER AS AN OPTION, PARTICIPATION IN a project labor agreement [during and for the work involved with such project when such requirement is], AND SHALL NOTIFY EACH CONTRACTOR OF THE OPTION TO INCLUDE OR NOT INCLUDE PARTICIPATION IN A PROJECT LABOR AGREEMENT WITH ITS BID, AS part of the agency, board, department, commission or officer of the state of New York, political subdivision, municipal corporation, public benefit corporation or local or state authority having jurisdiction over the public work request for proposals for the project and when the agency, board, department, commission or officer of the state of New York, political subdivision, municipal corporation, public benefit corporation or local or state authority having jurisdiction over the public work determines that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by requiring a project labor agreement, BUT SHALL IN ANY EVENT AWARD THE SUBCONTRACT, LEASE, CONTRACT, GRANT, BOND, COVENANT OR OTHER AGREEMENT FOR A PROJECT TO THE CONTRACTOR WITH THE LOW BID REGARDLESS OF WHETHER A PROJECT LABOR AGREEMENT WAS INCLUDED IN THE CONTRACTOR'S BID PROPOSAL.

S 6. This act shall take effect on the sixtieth day after it shall have become a law, and shall control all contracts advertised or solicited for bid on or after the effective date of this act under the provisions of any law requiring contracts to be let pursuant to provisions of law amended by this act; provided, however that the amend-

ments to subdivision 1 of section 103 of the general municipal law made by section two of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision (a) of section 41 of part X of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of section three of this act shall take effect.