

3714

2013-2014 Regular Sessions

I N S E N A T E

February 12, 2013

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law and the general municipal law, in relation to the definition of lowest responsible bidder and unfair labor practices for purposes of public works projects

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

1 Section 1. The labor law is amended by adding a new section 201-g to
2 read as follows:
3 S 201-G. DETERMINATION OF LOWEST RESPONSIBLE BIDDER. 1. WHENEVER
4 SELECTION OF THE LOWEST RESPONSIBLE BIDDER IS REQUIRED UNDER SECTION ONE
5 HUNDRED THREE OF THE GENERAL MUNICIPAL LAW, A PERSON, FIRM, CORPORATION,
6 SUCCESSOR CORPORATION, CONTRACTOR OR SUBCONTRACTOR SHALL NOT QUALIFY AS
7 A RESPONSIBLE BIDDER IF IT HAS COMMITTED ANY OF THE FOLLOWING VIOLATIONS
8 WITHIN A THREE YEAR PERIOD PRECEDING THE AWARD OF THE CONTRACT:
9 (A) A VIOLATION OF ANY PROVISION OF ARTICLE EIGHT OF THIS CHAPTER;
10 (B) A VIOLATION OF ANY STATE OR FEDERAL LABOR LAW INCLUDING BUT NOT
11 LIMITED TO OCCUPATIONAL SAFETY AND HEALTH; WAGES; CHILD LABOR; WORKERS'
12 COMPENSATION; UNEMPLOYMENT COMPENSATION; ORGANIZATIONAL RIGHTS; AND
13 LABOR STANDARDS;
14 (C) A VIOLATION OF ANY STATE OR FEDERAL LAW RELATING TO BID COLLUSION
15 OR RESTRAINT OF TRADE;
16 (D) A VIOLATION OF ANY STATE OR FEDERAL ENVIRONMENTAL LAW;
17 (E) A CRIMINAL CONVICTION OF ANY STATE OR FEDERAL LAW FOR ANY CONDUCT
18 RELATING TO BIDDING OR CONSTRUCTION-RELATED WORK BY THE BIDDER;
19 (F) AN OUTSTANDING DISQUALIFICATION FROM BIDDING ON ANY PUBLIC WORK
20 CONTRACT; OR
21 (G) A VIOLATION OF ANY STATE OR FEDERAL CIVIL RIGHTS, EMPLOYMENT DISA-
22 BILITY OR MINORITY PREFERENCE LAW.
23 2. THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL NOT DIMIN-
24 ISH THE DISCRETION OF THE AWARDING AUTHORITY TO DISQUALIFY A BIDDER ON

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

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1 OTHER GROUNDS WHICH THE AUTHORITY FINDS APPROPRIATE WHICH SHALL INCLUDE
2 BUT NOT BE LIMITED TO:

3 (A) LACK OF SUFFICIENT EXPERTISE, PRIOR EXPERIENCE WITH COMPARABLE
4 PROJECTS, OR SUFFICIENT RESOURCES TO PERFORM THE CONTRACT IN A TIMELY
5 AND COMPETENT MANNER;

6 (B) WHETHER THE BIDDER'S EMPLOYEES ARE PROPERLY TRAINED AND WHETHER
7 THE EQUIPMENT TO BE USED IS SAFE AND IN GOOD OPERATING CONDITION;

8 (C) WHETHER THE BIDDER HAS SUBMITTED A BID THAT IS MATHEMATICALLY OR
9 MATERIALLY UNBALANCED;

10 (D) SUBMISSION OF A BID SO MUCH LOWER THAN THE AGENCY'S ENGINEER'S
11 ESTIMATE THAT IT SEEMS UNLIKELY THAT THE BIDDER WILL BE ABLE TO PERFORM
12 THE CONTRACT SATISFACTORILY AT THE PRICE BID; OR

13 (E) PRESENTATION OF ANY FALSE OR MISLEADING STATEMENTS TO THE AGENCY
14 AWARDING THE CONTRACT IN CONNECTION WITH THE BID.

15 3. NO PERSON ACTING ON BEHALF OF A BIDDER SHALL LOBBY THE CONSTRUCTING
16 GOVERNMENTAL ENTITY FOR THE PURPOSE OF ASSISTING SUCH BIDDER IN SECURING
17 A BID. NO BID SHALL INCLUDE ANY COSTS ATTRIBUTABLE TO LOBBYING.

18 4. ANY PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION, LABOR ORGAN-
19 IZATION, CONTRACTOR OR SUBCONTRACTOR MAY, WITHIN TEN DAYS AFTER A BID IS
20 ACCEPTED, FILE AN APPLICATION TO CHALLENGE THE DETERMINATION UNDER
21 SECTION ONE HUNDRED THREE OF THE GENERAL MUNICIPAL LAW THAT THE BIDDER
22 CHOSEN WAS THE LOWEST RESPONSIBLE BIDDER. UPON RECEIPT OF SUCH APPLICA-
23 TION, THE COMMISSIONER OR CHIEF EXECUTIVE OFFICER OF THE PUBLIC ENTITY
24 SHALL CONDUCT A HEARING TO DETERMINE THE VALIDITY OF THE APPLICATION.
25 NOTICE SHALL BE GIVEN TO THE APPLICANT AND TO THE PROPOSED LOWEST
26 RESPONSIBLE BIDDER OF THE DATE, TIME AND PLACE OF THE HEARING. THE
27 APPLICANT AND THE PROPOSED LOWEST RESPONSIBLE BIDDER SHALL BE GIVEN THE
28 OPPORTUNITY TO PRESENT EVIDENCE AND WITNESSES ON THEIR BEHALF. THE
29 COMMISSIONER OR CHIEF EXECUTIVE OFFICER PRESIDING OVER SUCH HEARING
30 SHALL ISSUE A WRITTEN DECISION WITH FINDINGS OF FACT WHETHER THE
31 PROPOSED LOWEST RESPONSIBLE BIDDER IS RESPONSIBLE. SUCH CONTRACT SHALL
32 NOT BE AWARDED PRIOR TO SUCH DECISION. THE AWARDING AUTHORITY SHALL
33 NOTIFY ALL BIDDERS REGARDING THE SELECTION OF ITS PROPOSED LOWEST
34 RESPONSIBLE BIDDER.

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

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

1 contracts must be authorized by local law or, in the case of a district
2 corporation, school district or board of cooperative educational
3 services, by rule, regulation or resolution adopted at a public meeting.
4 In any case where a responsible bidder's or responsible offerer's gross
5 price is reducible by an allowance for the value of used machinery,
6 equipment, apparatus or tools to be traded in by a political subdivi-
7 sion, the gross price shall be reduced by the amount of such allowance,
8 for the purpose of determining the best value. In cases where two or
9 more responsible bidders furnishing the required security submit identi-
10 cal bids as to price, such officer, board or agency may award the
11 contract to any of such bidders. Such officer, board or agency may, in
12 his or her or its discretion, reject all bids or offers and readvertise
13 for new bids or offers in the manner provided by this section. In deter-
14 mining whether a purchase is an expenditure within the discretionary
15 threshold amounts established by this subdivision, the officer, board or
16 agency of a political subdivision or of any district therein shall
17 consider the reasonably expected aggregate amount of all purchases of
18 the same commodities, services or technology to be made within the
19 twelve-month period commencing on the date of purchase. Purchases of
20 commodities, services or technology shall not be artificially divided
21 for the purpose of satisfying the discretionary buying thresholds estab-
22 lished by this subdivision. A change to or a renewal of a discretionary
23 purchase shall not be permitted if the change or renewal would bring the
24 reasonably expected aggregate amount of all purchases of the same
25 commodities, services or technology from the same provider within the
26 twelve-month period commencing on the date of the first purchase to an
27 amount greater than the discretionary buying threshold amount. For
28 purposes of this section, "sealed bids" and "sealed offers", as that
29 term applies to purchase contracts, (including contracts for service
30 work, but excluding any purchase contracts necessary for the completion
31 of a public works contract pursuant to article eight of the labor law)
32 shall include bids and offers submitted in an electronic format includ-
33 ing submission of the statement of non-collusion required by section one
34 hundred three-d of this article, provided that the governing board of
35 the political subdivision or district, by resolution, has authorized the
36 receipt of bids and offers in such format. Submission in electronic
37 format may, for technology contracts only, be required as the sole meth-
38 od for the submission of bids and offers. Bids and offers submitted in
39 an electronic format shall be transmitted by bidders and offerers to the
40 receiving device designated by the political subdivision or district.
41 Any method used to receive electronic bids and offers shall comply with
42 article three of the state technology law, and any rules and regulations
43 promulgated and guidelines developed thereunder and, at a minimum, must
44 (a) document the time and date of receipt of each bid and offer received
45 electronically; (b) authenticate the identity of the sender; (c) ensure
46 the security of the information transmitted; and (d) ensure the confi-
47 dentiality of the bid or offer until the time and date established for
48 the opening of bids or offers. The timely submission of an electronic
49 bid or offer in compliance with instructions provided for such
50 submission in the advertisement for bids or offers and/or the specifica-
51 tions shall be the responsibility solely of each bidder or offerer or
52 prospective bidder or offerer. No political subdivision or district
53 therein shall incur any liability from delays of or interruptions in the
54 receiving device designated for the submission and receipt of electronic
55 bids and offers. FOR PURPOSES OF THIS SECTION, THE TERM "LOWEST RESPON-
56 SIBLE BIDDER" SHALL MEAN ANY PERSON, FIRM, CORPORATION, SUCCESSOR CORPO-

1 RATION, CONTRACTOR OR SUBCONTRACTOR WHO (I) SUBMITS THE LOWEST BID FOR A
2 PUBLIC WORK CONTRACT AND (II) IS NOT DISQUALIFIED ON GROUNDS PROVIDED IN
3 SECTION TWO HUNDRED ONE-G OF THE LABOR LAW.

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

7 1. Except as otherwise expressly provided by an act of the legislature
8 or by a local law adopted prior to September first, nineteen hundred
9 fifty-three, all contracts for public work involving an expenditure of
10 more than thirty-five thousand dollars and all purchase contracts
11 involving an expenditure of more than twenty thousand dollars, shall be
12 awarded by the appropriate officer, board or agency of a political
13 subdivision or of any district therein including but not limited to a
14 soil conservation district to the lowest responsible bidder furnishing
15 the required security after advertisement for sealed bids in the manner
16 provided by this section, provided, however, that purchase contracts
17 (including contracts for service work, but excluding any purchase
18 contracts necessary for the completion of a public works contract pursu-
19 ant to article eight of the labor law) may be awarded on the basis of
20 best value, as defined in section one hundred sixty-three of the state
21 finance law, to a responsive and responsible bidder or offerer in the
22 manner provided by this section except that in a political subdivision
23 other than a city with a population of one million inhabitants or more
24 or any district, board or agency with jurisdiction exclusively therein
25 the use of best value of awarding a purchase contract or purchase
26 contracts must be authorized by local law or, in the case of a district
27 corporation, school district or board of cooperative educational
28 services, by rule, regulation or resolution adopted at a public meeting.
29 In determining whether a purchase is an expenditure within the discre-
30 tionary threshold amounts established by this subdivision, the officer,
31 board or agency of a political subdivision or of any district therein
32 shall consider the reasonably expected aggregate amount of all purchases
33 of the same commodities, services or technology to be made within the
34 twelve-month period commencing on the date of purchase. Purchases of
35 commodities, services or technology shall not be artificially divided
36 for the purpose of satisfying the discretionary buying thresholds estab-
37 lished by this subdivision. A change to or a renewal of a discretionary
38 purchase shall not be permitted if the change or renewal would bring the
39 reasonably expected aggregate amount of all purchases of the same
40 commodities, services or technology from the same provider within the
41 twelve-month period commencing on the date of the first purchase to an
42 amount greater than the discretionary buying threshold amount. In any
43 case where a responsible bidder's or responsible offerer's gross price
44 is reducible by an allowance for the value of used machinery, equipment,
45 apparatus or tools to be traded in by a political subdivision, the gross
46 price shall be reduced by the amount of such allowance, for the purpose
47 of determining the low bid or best value. In cases where two or more
48 responsible bidders furnishing the required security submit identical
49 bids as to price, such officer, board or agency may award the contract
50 to any of such bidders. Such officer, board or agency may, in his, her
51 or its discretion, reject all bids or offers and readvertise for new
52 bids or offers in the manner provided by this section. FOR PURPOSES OF
53 THIS SECTION, THE TERM "LOWEST RESPONSIBLE BIDDER" SHALL MEAN ANY
54 PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION, CONTRACTOR OR SUBCON-
55 TRACTOR WHO (A) SUBMITS THE LOWEST BID FOR A PUBLIC WORK CONTRACT AND

1 (B) IS NOT DISQUALIFIED ON GROUNDS PROVIDED IN SECTION TWO HUNDRED ONE-G
2 OF THE LABOR LAW.

3 S 4. This act shall take effect on the first of September next
4 succeeding the date on which it shall have become a law; provided that
5 the amendments to subdivision 1 of section 103 of the general municipal
6 law made by section two of this act shall be subject to the expiration
7 and reversion of such subdivision pursuant to section 41 of part X of
8 chapter 62 of the laws of 2003, as amended, when upon such date the
9 provisions of section three of this act shall take effect.