

1925

2009-2010 Regular Sessions

I N A S S E M B L Y

January 14, 2009

Introduced by M. of A. THIELE -- read once and referred to the Committee
on Local Governments

AN ACT to enact the "fire district public construction flexibility
demonstration project act" to facilitate expedition of the fire
district renovation projects

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "fire district public construction flexibility demonstration project
3 act".
4 S 2. Definitions. For the purposes of this act the terms:
5 1. "Fire district" shall mean any fire district in New York state.
6 2. "Project" shall mean the building projects approved by the voters
7 of a fire district to reconstruct various fire district buildings,
8 including infrastructure improvements necessary to meet the district's
9 needs and site work, and acquire original furnishings, equipment,
10 machinery or apparatus within the fire district.
11 S 3. Notwithstanding any other provision of law to the contrary, all
12 contracts awarded or entered into by the fire district for design or
13 construction of fire building facilities included in the project shall
14 be governed by section four of this act and not section 101 of the
15 general municipal law.
16 S 4. 1. The fire district may award or enter into contracts for the
17 design or construction, of fire building facilities for the respective
18 fire district pursuant to a single general contract. In the event the
19 fire district elects to utilize a single general contract, the fire
20 district shall require:
21 (a) that notice of the invitation for bids for contracts state the
22 time and place of the receipt and opening of bids; and
23 (b) that bidders submit to the fire district prior to the opening of a
24 bid for the award of a contract pursuant to this section, a sealed list

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

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1 identifying the names of each subcontractor each contractor proposes to
2 utilize under the contract for the performance of the following subdivi-
3 sions of work:

4 (i) plumbing and gas fittings;

5 (ii) steam heating, hot water heating, ventilating and air condition-
6 ing apparatus; and

7 (iii) electrical wiring and standard illuminating fixtures.

8 2. The low bidder shall specify in such list the estimated value to be
9 paid each subcontractor for the work to be performed by such subcontractor.
10 After the fire district has announced the low bidder at the bid
11 opening, the fire district shall open any such low bidder's separate
12 sealed list and shall read aloud such subcontractors listed therein. All
13 such sealed lists except those of the low bidder shall be returned
14 unopened to their respective contractors following award of a contract.

15 3. The fire district shall provide in its construction or erection
16 contracts awarded as part of the project a provision requiring each
17 contractor to make prompt payment to its subcontractors performing each
18 subdivision of work listed in paragraph (b) of subdivision one of this
19 section. Within seven calendar days of the receipt of any payment from
20 the fire district, the contractor shall pay to each subcontractor that
21 portion of the proceeds of such payment representing the value of the
22 work performed by such subcontractor, based upon the actual value of the
23 subcontract, which has been approved and paid for by the fire district,
24 less an amount necessary to satisfy any claims, liens or judgments
25 against the subcontractor which have not been suitably discharged and
26 less any amount retained by the contractor as provided in this subdivi-
27 sion.

28 4. For such purpose, the subcontract may provide that the contractor
29 may retain not more than five per centum of each payment to the subcon-
30 tractor or not more than ten per centum of each such payment if prior to
31 entering into the subcontract the subcontractor is unable or unwilling
32 to provide, at the request of the contractor, a performance bond and a
33 labor and material bond both in the amount of the subcontract.

34 5. At the time of making a payment to the contractor for work
35 performed by the subcontractors set forth in paragraph (b) of subdivi-
36 sion one of this section, the fire district shall file in its office for
37 review a record of such payment. If any such subcontractor shall notify
38 the fire district and the contractor in writing that the contractor has
39 failed to make a payment to it as provided in this section and the
40 contractor shall fail, within five calendar days after receipt of such
41 notice, to furnish either proof of such payment or notice that the
42 amount claimed by the subcontractor is in dispute, the fire district
43 shall withhold from amounts then or thereafter becoming due and payable
44 to the contractor, other than from amounts becoming due and payable to
45 the contractor representing the value of work approved by the fire
46 district and performed by other subcontractors and which the contractor
47 is required to pay to such subcontractor within seven calendar days as
48 provided in this subdivision, an amount equal to that portion of the
49 fire district's prior payment to the contractor which the subcontractor
50 claims to be due it, shall remit the amount so withheld to the subcon-
51 tractor and deduct such payment from the amounts then otherwise due and
52 payable to the contractor, which payment shall as between the contractor
53 and the fire district, be deemed a payment by the fire district to the
54 contractor. In the event the contractor shall notify the fire district
55 that the claim of the subcontractor is in dispute, the fire district
56 shall withhold from amounts then or thereafter becoming due and payable

1 to the contractor, other than from amounts becoming due and payable to
2 the contractor representing the value of work approved by the fire
3 district and performed by other subcontractors and which the contractor
4 is required to pay to such subcontractors within seven calendar days, an
5 amount equal to that portion of the fire district's prior payment to the
6 contractor which the subcontractor claims to be due it and deposit such
7 amount so withheld in a separate interest-bearing account pending resol-
8 ution of the dispute, and the amount so deposited together with the
9 interest thereon shall be paid to the party or parties ultimately deter-
10 mined to be entitled thereto, or until the contractor and subcontractor
11 shall otherwise agree as to the disposition thereof. In the event the
12 fire district shall be required to withhold amounts from a contractor
13 for the benefit of more than one subcontractor, the amounts so withheld
14 shall be applied to or for such subcontractors in the order in which the
15 written notices of nonpayment have been received by the fire district,
16 and if more than one such notice was received on the same day, propor-
17 tionately based upon the amount of the subcontractor claims received on
18 such day.

19 6. Payment to a subcontractor shall not relieve the contractor from
20 responsibility for the work covered by the payment. Nothing contained in
21 this act shall be construed to create any obligation on the part of the
22 fire district to pay any subcontractor, nor shall anything provided in
23 this act serve to create any relationship in contract or otherwise,
24 implied or expressed, between the subcontractor and the fire district.

25 7. The provisions of this section shall not be applicable to the
26 subcontractors of a contractor whose contract is limited to the perform-
27 ance of a single subdivision of work listed in paragraph (b) of subdivi-
28 sion one of this section.

29 S 5. Nothing contained in this act shall prevent the fire district
30 from commencing an interpleader action to determine entitlement to a
31 disputed payment in accordance with section 1006 of the civil practice
32 law and rules, or any successor provision thereto.

33 S 6. This act shall take effect immediately.