

2064

2009-2010 Regular Sessions

I N   A S S E M B L Y

January 15, 2009

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Introduced by M. of A. SCHROEDER -- read once and referred 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 prac-  
tices for purposes of public works projects

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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  
25    OTHER GROUNDS WHICH THE AUTHORITY FINDS APPROPRIATE WHICH SHALL INCLUDE  
26    BUT NOT BE LIMITED TO:

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

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

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

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

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

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

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

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

33 S 2. Subdivision 1 of section 103 of the general municipal law, as  
34 amended by chapter 741 of the laws of 2005, is amended to read as  
35 follows:

36 1. Except as otherwise expressly provided by an act of the legislature  
37 or by a local law adopted prior to September first, nineteen hundred  
38 fifty-three, all contracts for public work involving an expenditure of  
39 more than twenty thousand dollars and all purchase contracts involving  
40 an expenditure of more than ten thousand dollars, shall be awarded by  
41 the appropriate officer, board or agency of a political subdivision or  
42 of any district therein including but not limited to a soil conservation  
43 district, to the lowest responsible bidder furnishing the required secu-  
44 rity after advertisement for sealed bids in the manner provided by this  
45 section. In any case where a responsible bidder's gross price is reduci-  
46 ble by an allowance for the value of used machinery, equipment, appara-  
47 tus or tools to be traded in by a political subdivision, the gross price  
48 shall be reduced by the amount of such allowance, for the purpose of  
49 determining the low bid. In cases where two or more responsible bidders  
50 furnishing the required security submit identical bids as to price, such  
51 officer, board or agency may award the contract to any of such bidders.  
52 Such officer, board or agency may, in his or its discretion, reject all  
53 bids and readvertise for new bids in the manner provided by this  
54 section. For purposes of this section, "sealed bids", as that term  
55 applies to purchase contracts, shall include bids submitted in an elec-  
56 tronic format, provided that the governing board of the political subdi-

vision or district, by resolution, has authorized the receipt of bids in such format. Submission in electronic format may not, however, be required as the sole method for the submission of bids. Bids submitted in an electronic format shall be transmitted by bidders to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids 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 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 until the time and date established for the opening of bids. The timely submission of an electronic bid in compliance with instructions provided for such submission in the advertisement for bids and/or the specifications shall be the responsibility solely of each bidder or prospective bidder. 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. FOR PURPOSES OF THIS SECTION, THE TERM "LOWEST RESPONSIBLE BIDDER" SHALL MEAN ANY PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION, CONTRACTOR OR SUBCONTRACTOR WHO (I) SUBMITS THE LOWEST BID FOR A PUBLIC WORK CONTRACT AND (II) IS NOT DISQUALIFIED ON GROUNDS PROVIDED IN SECTION TWO HUNDRED ONE-G OF THE LABOR LAW.

S 3. Subdivision 1 of section 103 of the general municipal law, as amended by chapter 413 of the laws of 1991, 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 twenty thousand dollars and all purchase contracts involving an expenditure of more than ten 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. In any case where a responsible bidder'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. 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 its discretion, reject all bids and readvertise for new bids in the manner provided by this section. FOR PURPOSES OF THIS SECTION, THE TERM "LOWEST RESPONSIBLE BIDDER" SHALL MEAN ANY PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION, CONTRACTOR OR SUBCONTRACTOR WHO (A) SUBMITS THE LOWEST BID FOR A PUBLIC WORK CONTRACT AND (B) IS NOT DISQUALIFIED ON GROUNDS PROVIDED IN SECTION TWO HUNDRED ONE-G OF THE LABOR LAW.

S 4. This act shall take effect on the first of September next succeeding the date on which it shall have become a law; provided that the amendments 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 section 41 of part X of chapter 62 of the laws of 2003, as amended, when such date the provisions of section three of this act shall take effect.