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

399

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JOHN, NOLAN, PERALTA, SCHROEDER -- Multi-Sponsored by -- M. of A. GALEF, GOTTFRIED, HEASTIE, LIFTON, V. LOPEZ, PERRY, PHEFFER, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to establishing the responsibility of contractors and subcontractors on public work projects and establishing a construction contract lowest responsible bidder registry

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

Section 1. Paragraph b of subdivision 3 of section 220-b of the labor law is amended by adding a new subparagraph 3 to read as follows:

(3) WHEN ANY PERSON OR CORPORATION, OR ANY OFFICER, DIRECTOR, OWNER AND/OR MANAGERIAL EMPLOYEE OF A CORPORATION, HAS BEEN CONVICTED OF A FELONY WITH RESPECT TO A PUBLIC WORK PROJECT WITH THE STATE, A MUNICIPAL CORPORATION, PUBLIC BENEFIT CORPORATION OR PUBLIC BODY AND SUCH FELONY ARISES FROM A VIOLATION OF THIS CHAPTER IN CONNECTION WITH SUBMITTING A COMPETITIVE BID FOR OR FULFILLING THE OBLIGATIONS OF A PUBLIC WORK CONTRACT, OR IS RELATED TO THE EMPLOYMENT OF PERSONS ON SUCH PROJECT, SUCH PERSON OR CORPORATION SHALL BE INELIGIBLE TO SUBMIT A BID ON OR BE AWARDED ANY PUBLIC WORK CONTRACT WITH THE STATE, OR ANY MUNICIPAL CORPORATION, PUBLIC BENEFIT CORPORATION OR PUBLIC BODY FOR A PERIOD OF FIVE YEARS FROM THE DATE OF SUCH FELONY CONVICTION.

S 2. The labor law is amended by adding two new sections 220-i and 220-j to read as follows:

S 220-I. CONTRACTOR AND SUBCONTRACTOR RESPONSIBILITY. 1. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS OTHERWISE SPECIFIED:

A. "BIDDER", "APPARENT LOWEST BIDDER", "CONTRACTOR" AND "SUBCONTRACTOR" SHALL MEAN ANY PERSON, PARTNERSHIP, FIRM, LIMITED LIABILITY COMPA-

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

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NY, CORPORATION OR BUSINESS ENTITY SUBMITTING A COMPETITIVE BID FOR, RECEIVING THE AWARD OF OR SUBMITTED FOR APPROVAL AS A SUBCONTRACTOR ON A CONTRACT BY ANY ONE OF THE CONTRACTING ENTITIES.

B. "CONTRACT" SHALL MEAN ANY CONSTRUCTION CONTRACT WITH A VALUE IN EXCESS OF TEN THOUSAND DOLLARS WHICH IS REQUIRED BY LAW TO BE LET BY COMPETITIVE BID TO THE LOWEST RESPONSIBLE BIDDER OR ANY CONSTRUCTION CONTRACT FOR WHICH THE CONTRACTING ENTITY HAS LET A COMPETITIVE BID OR REQUEST FOR PROPOSAL, ABSENT ANY STATUTORY MANDATE TO DO SO.

C. "CONTRACTING ENTITY" SHALL MEAN THE STATE OR ANY PUBLIC BENEFIT CORPORATION, MUNICIPAL CORPORATION, CHARTER SCHOOL, COMMISSION APPOINTED PURSUANT TO LAW, OR ANY SIMILAR ENTITY WHICH IS FINANCED IN WHOLE OR IN PART THROUGH AN INDUSTRIAL DEVELOPMENT AGENCY, JOB DEVELOPMENT AUTHORITY, THE DORMITORY AUTHORITY, THE STATE UNIVERSITY CONSTRUCTION FUND, OR THE NEW YORK STATE THRUWAY AUTHORITY.

2. IN DELIBERATING UPON THE RESPONSIBILITY OF A BIDDER, CONTRACTOR OR SUBCONTRACTOR ON A CONTRACT, TO WHICH THE STATE, OR A PUBLIC BENEFIT CORPORATION, MUNICIPAL CORPORATION, CHARTER SCHOOL, COMMISSION APPOINTED PURSUANT TO LAW IS A PARTY OF WHICH IS FINANCED IN WHOLE OR IN PART THROUGH AN INDUSTRIAL DEVELOPMENT AGENCY, JOB DEVELOPMENT AUTHORITY, THE DORMITORY AUTHORITY, THE STATE UNIVERSITY CONSTRUCTION FUND, THE NEW YORK STATE THRUWAY AUTHORITY OR SIMILAR PUBLIC ENTITY, THE CONTRACTING ENTITY SHALL GIVE DUE CONSIDERATION TO ANY CREDIBLE EVIDENCE OR RELIABLE INFORMATION THAT THE PAST OR CURRENT RECORD OF A BIDDER OR PROPOSED SUBCONTRACTOR SHALL WARRANT A DETERMINATION THAT SUCH BIDDER OR SUBCONTRACTOR IS NOT A RESPONSIBLE BIDDER.

THE CONTRACTING ENTITY, IN DETERMINING THE RESPONSIBILITY OF THE APPARENT LOWEST BIDDER SHALL REQUIRE, AND THE APPARENT LOWEST RESPONSIBLE BIDDER SHALL PROVIDE, THE FOLLOWING INFORMATION IN ORDER FOR THE CONTRACTING ENTITY TO DETERMINE THE PECUNIARY AND FINANCIAL RESPONSIBILITY, ACCOUNTABILITY, OPERATIONAL RESPONSIBLENESS, RELIABILITY, SKILL, CAPACITY, ABILITY, JUDGMENT, INTEGRITY AND MORAL WORTH OF THE APPARENT LOWEST RESPONSIBLE BIDDER:

A. A DESCRIPTION OF ITS EXPERIENCE WITH PROJECTS OF COMPARATIVE SIZE, COMPLEXITY, AND COST WITHIN THE PAST FIVE YEARS, TOGETHER WITH DOCUMENTARY EVIDENCE OF SUCH PROJECTS; AND A DEMONSTRATION OF CONTRACTOR'S ABILITY AND CAPACITY TO PERFORM A SUBSTANTIAL PORTION OF THE PROJECT WITH HIS OR HER OWN WORK FORCE;

B. DOCUMENTATION FROM PREVIOUS PROJECTS REGARDING TIMELINESS OF PERFORMANCE; QUALITY OF WORK; EXTENSION REQUESTS; LABOR DISPUTES; LITIGATION AND/OR ARBITRATION ARISING FROM SUCH WORK, INCLUDING FINES AND PENALTIES IMPOSED AND PAYMENT THEREOF; LIENS FILED; HISTORY OF CLAIMS FOR EXTRA WORK; CONTRACT DEFAULTS; AND AN EXPLANATION OF THE SAME;

C. IDENTIFICATION AND DESCRIPTION OF ANY PROJECTS WITHIN THE PREVIOUS FIVE YEARS THAT THE APPARENT LOWEST BIDDER WAS DETERMINED BY THE CONTRACTING ENTITY NOT TO BE A RESPONSIBLE BIDDER, AND THE REASONS GIVEN BY SUCH ENTITY THEREFORE, TOGETHER WITH AN EXPLANATION THEREOF;

D. AN ADEQUATE DEMONSTRATION OF FINANCIAL RESPONSIBILITY, WHICH MAY INCLUDE A CERTIFIED FINANCIAL STATEMENT PREPARED BY A CERTIFIED PUBLIC ACCOUNTANT, TO ASSURE THAT THE APPARENT LOWEST RESPONSIBLE BIDDER POSSESSES ADEQUATE RESOURCES AND AVAILABILITY OF CREDIT AND THE MEANS AND ABILITY TO PROCURE INSURANCE AND BONDS REQUIRED FOR THE PROJECT;

E. DISCLOSURE OF ANY SUSPENSIONS OR REVOCATIONS OF ANY PROFESSIONAL LICENSE OF ANY DIRECTOR, OFFICER, OWNER OR MANAGERIAL EMPLOYEE OF THE APPARENT LOWEST RESPONSIBLE BIDDER, TO THE EXTENT THAT ANY WORK TO BE PERFORMED IS WITHIN THE FIELD OF SUCH LICENSED PROFESSION;

F. DISCLOSURE OF ANY AND ALL FEDERAL OFFICE OF SAFETY AND HEALTH ADMINISTRATION VIOLATIONS WITHIN THE PREVIOUS FIVE YEARS, AS WELL AS ALL NOTICES OF SUCH VIOLATIONS FILED AGAINST THE APPARENT LOWEST BIDDER IN THE SAME FIVE YEAR PERIOD, TOGETHER WITH A DESCRIPTION AND EXPLANATION OF REMEDIATION OR OTHER STEPS TAKEN REGARDING SUCH VIOLATIONS AND NOTICES OF VIOLATIONS;

G. DISCLOSURE OF ANY AND ALL VIOLATIONS OF THIS ARTICLE AND ANY OTHER PROVISION OF THIS CHAPTER, INCLUDING, BUT NOT LIMITED TO, CHILD LABOR VIOLATIONS, FAILURE TO PAY WAGES AND UNEMPLOYMENT INSURANCE TAX DELINQUENCIES WITHIN THE PAST FIVE YEARS;

H. CERTIFICATION AND LIST OF EQUIPMENT OWNED AND/OR LEASED BY THE APPARENT LOWEST RESPONSIBLE BIDDER THAT WILL BE UTILIZED ON THE PROJECT, TOGETHER WITH MAINTENANCE RECORDS AND SUCH ASSURANCES REGARDING SAFETY THEREOF AS THE CONTRACTING ENTITY CONSIDERS APPROPRIATE;

I. DISCLOSURE OF ANY LITIGATION, INCLUDING COPIES OF PLEADINGS, IN WHICH THE APPARENT LOWEST BIDDER HAS BEEN NAMED A DEFENDANT OR THIRD PARTY DEFENDANT IN AN ACTION INVOLVING A CLAIM FOR PERSONAL INJURY OR WRONGFUL DEATH, ARISING FROM PERFORMANCE OF WORK RELATED TO ANY PROJECT IN WHICH IT HAS BEEN ENGAGED WITHIN THE PREVIOUS FIVE YEARS;

J. DISCLOSURE OF VIOLATIONS OF THE WORKERS' COMPENSATION LAW, INCLUDING, BUT NOT LIMITED TO THE FAILURE TO PROVIDE PROOF OF WORKERS' COMPENSATION OR DISABILITY COVERAGE AND/OR ANY LAPSES THEREOF;

K. DISCLOSURE OF ANY FELONY CONVICTIONS, INVOLVING THE LOWEST RESPONSIBLE BIDDER, ITS OFFICERS, DIRECTORS, OWNERS AND/OR MANAGERIAL EMPLOYEES WITHIN THE PAST FIVE YEARS;

L. DISCLOSURE OF ANY VIOLATIONS WITHIN THE PAST FIVE YEARS OR PENDING CHARGES CONCERNING FEDERAL, STATE OR MUNICIPAL ENVIRONMENTAL AND/OR HEALTH LAWS, CODES, RULES AND/OR REGULATIONS; AND

M. IDENTIFY ALL WORK TO BE SUBCONTRACTED ALONG WITH ITS VALUE AND WHEN REQUESTED BY THE CONTRACTING ENTITY, THE FIRM OR FIRMS TO WHICH THE WORK WILL BE SUBCONTRACTED; THE APPROVAL OF THE SUBCONTRACTORS BY THE CONTRACTING ENTITY, AS PROVIDED IN THE GENERAL CONDITIONS, SHALL BE SUBJECT TO THE SAME EVALUATION OF RESPONSIBILITY CONTAINED WITHIN THIS SECTION.

3. PRIOR TO A FINAL DETERMINATION THAT THE APPARENT LOWEST RESPONSIBLE BIDDER IS NOT RESPONSIBLE, THE CONTRACTING ENTITY SHALL NOTIFY THE PARTY OF SAME, IN WRITING, STATING THE REASONS FOR A DECLINATION, AND SETTING FORTH A TIME, DATE AND PLACE FOR THE APPARENT LOWEST BIDDER TO APPEAR AND BE HEARD, PRIOR TO SUCH DETERMINATION BEING MADE REGARDING ITS RESPONSIBILITY.

IN THE EVENT OF A FINAL DETERMINATION THAT THE APPARENT LOWEST RESPONSIBLE BIDDER IS NOT RESPONSIBLE, OR THAT THE APPARENT LOWEST RESPONSIBLE BIDDER FAILED TO PROVIDE THE REQUIRED INFORMATION AND THEREBY IS DISQUALIFIED, THE NEXT LOWEST RESPONSIBLE BIDDER SHALL BECOME THE APPARENT LOWEST RESPONSIBLE BIDDER AND SHALL BE SUBJECT TO THE REQUIREMENTS CONTAINED IN THIS SECTION.

S 220-J. CONSTRUCTION CONTRACT LOWEST RESPONSIBLE BIDDER REGISTRY. 1. THE COMMISSIONER SHALL ESTABLISH RULES AND REGULATIONS PROVIDING FOR THE ESTABLISHMENT OF A CENTRALIZED CONSTRUCTION CONTRACT LOWEST RESPONSIBLE BIDDER REGISTRY. EACH CONTRACTING ENTITY, AS DEFINED IN SECTION TWO HUNDRED TWENTY-I OF THIS ARTICLE, UPON AWARDING A CONSTRUCTION CONTRACT PURSUANT TO COMPETITIVE BID, SHALL PROVIDE THE COMMISSIONER WITH A COPY OF THE DOCUMENTATION SUBMITTED BY THE BIDDER UNDER THE REQUIREMENTS OF SUCH SECTION.

2. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSIONER SHALL MAKE AVAILABLE ANY AND ALL INFORMATION INCLUDED IN THE CONSTRUCTION

CONTRACT LOWEST RESPONSIBLE BIDDER REGISTRY TO ANY INDIVIDUAL REQUESTING SUCH IN WRITING.

S 3. This act shall take effect on the sixtieth day after it shall have become a law.