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

523

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

AN ACT to amend the state finance law and the general municipal law, in relation to requiring quality performance and payment bonds on public work

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

Section 1. The section heading and subdivisions 1 and 2 of section 137 of the state finance law, the section heading as amended by chapter 700 of the laws of 1964, subdivision 1 as separately amended by section 17 of part MM of chapter 57 and chapter 619 of the laws of 2008 and subdivision 2 as amended by chapter 137 of the laws of 1985, are amended and a new subdivision 1-a is added to read as follows:

[Bond to secure payment of certain claims arising from a public improvement; enforcement] BONDS COVERING PERFORMANCE PAYMENT ON PUBLIC CONTRACTS.

1. [In addition to other bond or bonds, if any, required by law for the completion of a work specified in a contract for the prosecution of a public improvement for the state of New York a municipal corporation, a public benefit corporation or a commission appointed pursuant to law, or in the absence of any such requirement, the comptroller may or the other appropriate official, respectively, shall nevertheless] NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL CONTRACTS MADE AND AWARDED BY THE STATE, OR BY ANY PUBLIC DEPARTMENT, OR BY ANY PUBLIC BENEFIT CORPORATION, OR BY ANY PUBLIC CORPORATION, OR BY ANY OFFICIAL THEREOF, REFERRED TO IN THIS SECTION AS THE "PUBLIC OWNER", FOR CONSTRUCTION, RECONSTRUCTION OR ALTERATION OF ANY PUBLIC WORK PROJECT SHALL require, prior to the approval of any such contract, A BOND GUARANTEEING THE FAITHFUL PERFORMANCE OF SUCH CONTRACT AND a bond guaranteeing prompt payment of moneys due to all persons furnishing labor or materials to

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

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the contractor or any subcontractors in the prosecution of the work provided for in such contract. Whenever a municipal corporation issues a permit subject to compliance with section two hundred twenty of the labor law, such permittee or its contractor or subcontractors furnishing workers shall post a payment bond subject to this section. Provided, however, that all performance bonds and payment bonds may, at the discretion of the [head of the state agency, public benefit corporation or commission, or his or her designee] PUBLIC OWNER, be dispensed with for the completion of a work specified in a contract for the prosecution of a public improvement for the state of New York for which bids are solicited where the aggregate amount of the contract is under one hundred thousand dollars and provided further, that in a case where the contract is not subject to the multiple contract award requirements of section one hundred thirty-five of this article, such requirements may be dispensed with where the [head of the state agency, public benefit corporation or commission] PUBLIC OWNER finds it to be in the public interest and where the aggregate amount of the contract awarded or to be awarded is less than two hundred thousand dollars. Provided further, that in a case where a performance or payment bond is dispensed with, twenty per centum may be retained from each progress payment or estimate until the entire contract work has been completed and accepted, at which time the [head of the state agency, public benefit corporation or commission] PUBLIC OWNER shall, pending the payment of the final estimate, pay not to exceed seventy-five per centum of the amount of the retained percentage.

1-A. BONDS REQUIRED BY THIS SECTION SHALL BE WRITTEN WITH SURETY COMPANIES LICENSED TO DO BUSINESS IN NEW YORK STATE, ON THE UNITED STATES TREASURY LIST AND RATED "A-" OR BETTER BY BEST'S RATING SERVICE OR AN EQUIVALENT RATING AS CERTIFIED BY THE SUPERINTENDENT OF INSURANCE.

2. [A copy] COPIES of such PERFORMANCE AND payment [bond] BONDS shall be kept in the office of the head of the department or bureau having charge of the public improvement in connection with which the bond was given and a copy shall also be kept in the office of the comptroller or other appropriate official; such copies shall be open to public inspection.

S 2. The general municipal law is amended by adding a new section 103-g to read as follows:

S 103-G. BONDS COVERING PERFORMANCE PAYMENT ON PUBLIC CONTRACTS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL CONTRACTS MADE AND AWARDED BY THE APPROPRIATE OFFICER, BOARD OR AGENCY OF A POLITICAL SUBDIVISION OR OF ANY DISTRICT THEREIN, REFERRED TO IN THIS SECTION AS THE "PUBLIC OWNER", FOR CONSTRUCTION, RECONSTRUCTION OR ALTERATION OF ANY PUBLIC WORK PROJECT SHALL REQUIRE, PRIOR TO THE APPROVAL OF ANY SUCH CONTRACT, A BOND GUARANTEEING THE FAITHFUL PERFORMANCE OF SUCH CONTRACT AND A BOND GUARANTEEING PROMPT PAYMENT OF MONEYS DUE TO ALL PERSONS FURNISHING LABOR OR MATERIALS TO THE CONTRACTOR OR HIS OR HER SUBCONTRACTORS IN THE PROSECUTION OF THE WORK PROVIDED FOR IN SUCH CONTRACT. PROVIDED, HOWEVER, THAT ALL PERFORMANCE BONDS AND PAYMENT BONDS MAY, AT THE DISCRETION OF THE PUBLIC OWNER, BE DISPENSED WITH FOR THE COMPLETION OF A WORK SPECIFIED IN A CONTRACT FOR THE PROSECUTION OF SUCH CONTRACT WHERE THE AGGREGATE AMOUNT OF THE CONTRACT IS UNDER ONE HUNDRED THOUSAND DOLLARS AND PROVIDED FURTHER, THAT IN A CASE WHERE THE CONTRACT IS NOT SUBJECT TO THE MULTIPLE CONTRACT AWARD REQUIREMENTS OF SECTION ONE HUNDRED ONE OF THIS ARTICLE, SUCH REQUIREMENTS MAY BE DISPENSED WITH WHERE THE PUBLIC OWNER FINDS IT TO BE IN THE PUBLIC INTEREST AND WHERE THE AGGREGATE AMOUNT OF THE CONTRACT AWARDED OR TO BE AWARDED IS LESS

THAN TWO HUNDRED THOUSAND DOLLARS. PROVIDED FURTHER, THAT IN A CASE WHERE A PERFORMANCE OR PAYMENT BOND IS DISPENSED WITH, TWENTY PER CENTUM MAY BE RETAINED FROM EACH PROGRESS PAYMENT OR ESTIMATE UNTIL THE ENTIRE CONTRACT WORK HAS BEEN COMPLETED AND ACCEPTED, AT WHICH TIME THE PUBLIC OWNER SHALL, PENDING THE PAYMENT OF THE FINAL ESTIMATE, PAY NOT TO EXCEED SEVENTY-FIVE PER CENTUM OF THE AMOUNT OF THE RETAINED PERCENTAGE.

2. BONDS REQUIRED BY THIS SECTION SHALL BE WRITTEN WITH SURETY COMPANIES LICENSED TO DO BUSINESS IN NEW YORK STATE, ON THE UNITED STATES TREASURY LIST AND RATED "A-" OR BETTER BY BEST'S RATING SERVICE OR AN EQUIVALENT RATING AS CERTIFIED BY THE SUPERINTENDENT OF INSURANCE.

3. COPIES OF SUCH PERFORMANCE AND PAYMENT BONDS SHALL BE KEPT BY THE PUBLIC OWNER HAVING CHARGE OF THE PUBLIC IMPROVEMENT IN CONNECTION WITH WHICH THE BOND WAS GIVEN.

S 3. This act shall take effect on the thirtieth day after it shall have become a law and shall apply to all contracts advertised for bid on or after such date.