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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 26, 2009

Introduced by M. of A. BARRA, WALKER -- Multi-Sponsored by -- M. of A. TOWNSEND -- read once and referred to the Committee on Education

AN ACT in relation to enacting the "Baldwin union free school district public construction flexibility demonstration project act" to facilitate expedition of the Baldwin union free school district construction, construction/renovation or alteration of school facilities project

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

Section 1. Short title. This act shall be known and may be cited as the "Baldwin union free school district public construction flexibility demonstration project act".

S 2. Legislative intent. The legislature hereby finds and declares that the Baldwin union free school district is faced with the exceptional circumstance of engaging in a $26,976,993 renovation and alteration of school facilities project to upgrade the facility structures of the Baldwin union free school district. The legislature further finds that the Baldwin union free school district has requested of the legislature statutory flexibility to engage in innovative construction methods which have proven to save time, money and other public resources in various parts of the state while insuring proper safeguards against limited competition, corruption and inadequate quality construction.

S 3. Definitions. For the purposes of this act the terms:

1. "School district" shall mean the Baldwin union free school district.

2. "Project" shall mean the construction, construction/renovation or alteration of school building facilities project approved by the voters of the Baldwin union free school district on February 4, 2004, to be engaged in by the school district to upgrade the facility structures of the school district.

S 4. Notwithstanding any other provision of law to the contrary, all contracts awarded or entered into by the school district for construction, construction/renovation or alteration of school building

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

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facilities included in the project shall be governed by section five of this act.

S 5. 1. Pursuant to approval of the project at a referendum of the school district's voters, the district may award or enter into contracts for the renovation and alteration of school building facilities for the school district at a total project cost not to excess $26,976,993 pursuant to a single general contract for portions of the project. In the event the school district elects to utilize a single general contract for portions of the project, the school district shall require:

(a) that notice of the invitation for bids for contracts state the time and place of the receipt and opening of bids; and

(b) that bidders submit to the school district prior to the opening of a bid for the award of a contract pursuant to this section, a sealed list identifying the names of each subcontractor each contractor proposes to utilize under the contract for the performance of the following subdivisions of work:

(i) plumbing and gas fittings;

(ii) steam heating, hot water heating, ventilating and air conditioning apparatus; and

(iii) electrical wiring and standard illuminating fixtures.

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

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

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

5. At the time of making a payment to the contractor for work performed by the subcontractors set forth in paragraph (b) of subdivision one of this section, the school district shall file in its office for review a record of such payment. If any such subcontractor shall notify the school district and the contractor in writing that the contractor has failed to make a payment to it as provided in this section and the contractor shall fail, within five calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the subcontractor is in dispute, the school district shall withhold from amounts then or thereafter becoming

due and payable to the contractor, other than from amounts becoming due and payable to the contractor representing the value of work approved by the school district and performed by other subcontractors and which the contractor is required to pay to such subcontractors within seven calendar days as provided in this subdivision, an amount equal to that portion of the school district's prior payment to the contractor which the subcontractor claims to be due it, shall remit the amount so withheld to the subcontractor and deduct such payment from the amounts then otherwise due and payable to the contractor, which payment shall as between the contractor and the school district, be deemed a payment by the school district to the contractor. In the event the contractor shall notify the school district that the claim of the subcontractor is in dispute, the school district shall withhold from amounts then or thereafter becoming due and payable to the contractor, other than from amounts becoming due and payable to the contractor representing the value of work approved by the school district and performed by other subcontractors and which the contractor is required to pay to such subcontractors within seven calendar days, an amount equal to that portion of the school district's prior payment to the contractor which the subcontractor claims to be due it and deposit such amount so withheld in a separate interest-bearing account pending resolution of the dispute, and the amount so deposited, together with the interest thereon, shall be paid to the party or parties ultimately determined to be entitled thereto, or until the contractor and subcontractor shall otherwise agree as to the disposition thereof. In the event the school district shall be required to withhold amounts from a contractor for the benefit of more than one subcontractor, the amounts so withheld shall be applied to or for such subcontractors in the order in which the written notices of nonpayment have been received by the school district, and if more than one such notice was received on the same day, proportionately based upon the amount of the subcontractor claims received on such day.

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

7. The provisions of this section shall not be applicable to the subcontractors of a contractor whose contract is limited to the performance of a single subdivision of work listed in paragraph (b) of subdivision one of this section.

S 6. Nothing contained in this act shall prevent the school district from commencing an interpleader action to determine entitlement to a disputed payment in accordance with section 1006 of the civil practice law and rules, or any successor provision thereto.

S 7. Nothing contained in this act shall be construed to exempt a project undertaken pursuant to the provisions of this act from the review and approval proceedings applied to such projects by the education department when undertaken pursuant to the education law.

S 8. Any contract for construction, construction/renovation or alteration of school building facilities in the school district pursuant to section five of this act shall be awarded or entered into within three years of the effective date of this act.

S 9. This act shall take effect immediately.