

8987

2009-2010 Regular Sessions

I N   A S S E M B L Y

June 17, 2009

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Introduced by M. of A. MILLER -- read once and referred to the Committee on Education

AN ACT to enact the "Spackenkill union free school district public construction flexibility demonstration project act" to facilitate expedition of the Spackenkill union free school district renovation project

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

- 1     Section 1. This act shall be known and may be cited as the "Spacken-  
2 kill union free school district public construction flexibility demon-  
3 stration project act".
- 4     S 2. Legislative intent. The legislature hereby finds and declares  
5 that the Spackenkill union free school district is faced with the excep-  
6 tional circumstance of engaging in a 13,934,000 dollar building project  
7 within the Spackenkill union free school district. The legislature  
8 further finds that the Spackenkill union free school district has  
9 requested of the legislature statutory flexibility to engage in innova-  
10 tive construction methods which have proven to save time, money and  
11 other public resources in various parts of the state while insuring  
12 proper safeguards against limited competition, corruption and inadequate  
13 quality construction.
- 14     S 3. Definitions. For the purposes of this act the terms:
- 15     1. "School district" shall mean the Spackenkill union free school  
16 district.
- 17     2. "Project" shall mean the building projects approved by the voters  
18 on February 17, 2009 to be engaged in by the Spackenkill union free  
19 school district to renovate and expand the high school within the school  
20 district.
- 21     S 4. Notwithstanding any other provision of law to the contrary, all  
22 contracts awarded or entered into by the school district for design or  
23 construction of school building facilities included in the project shall

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

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1 be governed by section five of this act and not section 101 of the  
2 general municipal law.

3 S 5. 1. The school district may award or enter into contracts for the  
4 design or construction, of school building facilities for the Spacken-  
5 kill union free school district at a total project cost not to exceed  
6 13,934,000 dollars pursuant to a single general contract. In the event  
7 the school district elects to utilize a single general contract, the  
8 school district shall require:

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

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

16 (i) plumbing and gas fittings;

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

19 (iii) electrical wiring and standard illuminating fixtures.

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

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

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

46 5. At the time of making a payment to the contractor for work  
47 performed by the subcontractors set forth in paragraph (b) of subdivi-  
48 sion one of this section, the school district shall file in its office  
49 for review a record of such payment. If any such subcontractor shall  
50 notify the school district and the contractor in writing that the  
51 contractor has failed to make a payment to it as provided in this  
52 section and the contractor shall fail, within five calendar days after  
53 receipt of such notice, to furnish either proof of such payment or  
54 notice that the amount claimed by the subcontractor is in dispute, the  
55 school district shall withhold from amounts then or thereafter becoming  
56 due and payable to the contractor, other than from amounts becoming due

1 and payable to the contractor representing the value of work approved by  
2 the school district and performed by other subcontractors and which the  
3 contractor is required to pay to such subcontractors within seven calen-  
4 dar days as provided in this subdivision, an amount equal to that  
5 portion of the school district's prior payment to the contractor which  
6 the subcontractor claims to be due it, shall remit the amount so with-  
7 held to the subcontractor and deduct such payment from the amounts then  
8 otherwise due and payable to the contractor, which payment shall as  
9 between the contractor and the school district, be deemed a payment by  
10 the school district to the contractor. In the event the contractor shall  
11 notify the school district that the claim of the subcontractor is in  
12 dispute, the school district shall withhold from amounts then or there-  
13 after becoming due and payable to the contractor, other than from  
14 amounts becoming due and payable to the contractor representing the  
15 value of work approved by the school district and performed by other  
16 subcontractors and which the contractor is required to pay to such  
17 subcontractors within seven calendar days, an amount equal to that  
18 portion of the school district's prior payment to the contractor which  
19 the subcontractor claims to be due it and deposit such amount so with-  
20 held in a separate interest-bearing account pending resolution of the  
21 dispute, and the amount so deposited together with the interest thereon  
22 shall be paid to the party or parties ultimately determined to be enti-  
23 tled thereto, or until the contractor and subcontractor shall otherwise  
24 agree as to the disposition thereof. In the event the school district  
25 shall be required to withhold amounts from a contractor for the benefit  
26 of more than one subcontractor, the amounts so withheld shall be applied  
27 to or for such subcontractors in the order in which the written notices  
28 of nonpayment have been received by the school district, and if more  
29 than one such notice was received on the same day, proportionately based  
30 upon the amount of the subcontractor claims received on such day.

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

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

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

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

50 S 8. This act shall take effect immediately.