

3235

2009-2010 Regular Sessions

I N S E N A T E

March 13, 2009

Introduced by Sens. FLANAGAN, BONACIC, MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to establishing a responsible bidders database in the office of the state comptroller

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 "Responsible Bidders Database Act".

2 S 2. The state finance law is amended by adding a new section 147 to
3 read as follows:

4 S 147. RESPONSIBLE BIDDERS COMPUTERIZED DATABASE; REPORTING OF
5 CONTRACTED GOODS AND SERVICES. 1. THE STATE COMPTROLLER SHALL MAINTAIN A
6 COMPUTERIZED DATABASE SYSTEM THAT SHALL CONTAIN INFORMATION FOR EVERY
7 CONTRACT FOR A STATE AGENCY OR PUBLIC AUTHORITY. THE STATE COMPTROLLER
8 SHALL MAINTAIN THE INFORMATION REQUIRED BY THIS SECTION IN A FORM THAT
9 WILL ENABLE EACH AGENCY AND PUBLIC AUTHORITY TO PERFORM ITS DUTIES.

10 2. EACH STATE AGENCY AND PUBLIC AUTHORITY SHALL COLLECT THE INFORMATION SET FORTH IN THIS SUBDIVISION FOR EACH CONTRACT THAT THE AGENCY OR
11 PUBLIC AUTHORITY ENTERS INTO, AND SHALL PROVIDE THIS INFORMATION TO THE
12 STATE COMPTROLLER. THE INFORMATION SHALL BE SUBMITTED IN A FORM OR
13 FORMAT AND ON A SCHEDULE TO BE DETERMINED BY THE STATE COMPTROLLER. THE
14 INFORMATION SHALL INCLUDE, BUT NOT BE LIMITED TO, AT LEAST THE FOLLOWING
15 DATA:

16 A. THE CURRENT ADDRESSES AND TELEPHONE NUMBERS OF THE CONTRACTOR'S
17 PRINCIPAL EXECUTIVE OFFICES AND THE CONTRACTOR'S PRIMARY PLACE OF BUSINESS IN NEW YORK STATE, IF DIFFERENT.

18 B. THE ADDRESSES OF THE THREE LARGEST SITES AT WHICH IT IS ANTICIPATED
19 THAT WORK WOULD OCCUR IN CONNECTION WITH THE PROPOSED CONTRACT, BASED ON
20 THE NUMBER OF PERSONS TO BE EMPLOYED AT EACH SITE.

21 C. ANY OTHER NAMES UNDER WHICH THE CONTRACTOR HAS CONDUCTED BUSINESS
22 WITHIN THE PRIOR FIVE YEARS.

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

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1 D. THE ADDRESSES AND TELEPHONE NUMBERS OF ALL PRINCIPAL PLACES OF
2 BUSINESS AND PRIMARY PLACES OF BUSINESS IN NEW YORK STATE, IF DIFFERENT,
3 WHERE THE CONTRACTOR HAS CONDUCTED BUSINESS WITHIN THE PRIOR FIVE YEARS.

4 E. THE DUN & BRADSTREET NUMBER OF THE CONTRACTOR, IF ANY.

5 F. THE TAXPAYER IDENTIFICATION NUMBERS, EMPLOYER IDENTIFICATION
6 NUMBERS OR SOCIAL SECURITY NUMBERS OF THE CONTRACTOR AND OF THE DIVISION
7 OR BRANCH OF THE CONTRACTOR WHICH IS ACTUALLY ENTERING INTO THE
8 CONTRACT.

9 G. THE TYPE OF BUSINESS ENTITY OF THE CONTRACTOR, INCLUDING, BUT NOT
10 LIMITED TO, SOLE PROPRIETORSHIP, PARTNERSHIP, JOINT VENTURE OR CORPO-
11 RATION.

12 H. THE DATE SUCH BUSINESS ENTITY WAS FORMED, THE STATE, COUNTY, AND
13 COUNTRY IF NOT WITHIN THE UNITED STATES, IN WHICH IT WAS FORMED, AND THE
14 COUNTIES WITHIN NEW YORK STATE IN WHICH IT HAS TRANSACTED OR DONE BUSI-
15 NESS WITHIN THE PRIOR FIVE YEARS.

16 I. THE PRINCIPAL OWNERS AND OFFICERS OF THE CONTRACTOR, THEIR DATES OF
17 BIRTH, TAXPAYER IDENTIFICATION NUMBERS, SOCIAL SECURITY NUMBERS AND
18 THEIR CURRENT BUSINESS ADDRESSES AND TELEPHONE NUMBERS.

19 J. THE NAMES, CURRENT BUSINESS ADDRESSES AND TELEPHONE NUMBERS,
20 TAXPAYER IDENTIFICATION NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS OF
21 AFFILIATES OF THE CONTRACTORS.

22 K. THE PRINCIPAL OWNERS AND OFFICERS OF AFFILIATES OF THE CONTRACTOR
23 AND THEIR CURRENT BUSINESS ADDRESSES AND TELEPHONE NUMBERS.

24 L. THE PRINCIPAL OWNERS AND OFFICERS OF EVERY SUBCONTRACTOR.

25 M. THE TYPE, AMOUNT AND CONTRACT REGISTRATION NUMBER OF ALL OTHER
26 CONTRACTS AWARDED TO THE CONTRACTOR, AS REFLECTED IN THE DATABASE MAIN-
27 TAINED PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

28 N. THE CONTRACT SANCTION HISTORY OF THE CONTRACTOR FOR THE PRIOR FIVE
29 YEARS, INCLUDING, BUT NOT LIMITED TO, ALL CAUTIONS, SUSPENSIONS, DEBAR-
30 MENTS, CANCELLATIONS OF A CONTRACT BASED UPON THE CONTRACTOR'S BUSINESS
31 CONDUCT, DECLARATIONS OF DEFAULT ON ANY CONTRACT MADE BY ANY GOVERN-
32 MENTAL ENTITY, DETERMINATIONS OF INELIGIBILITY TO BID OR PROPOSE ON
33 CONTRACTS, AND WHETHER ANY PROCEEDINGS TO DETERMINE ELIGIBILITY TO BID
34 OR PROPOSE ON CONTRACTS ARE PENDING.

35 O. THE CONTRACT SANCTION HISTORY FOR THE PRIOR FIVE YEARS OF AFFIL-
36 IATES OF THE CONTRACTOR INCLUDING, BUT NOT LIMITED TO, ALL CAUTIONS,
37 SUSPENSIONS, DEBARMENTS, CANCELLATIONS OF A CONTRACT BASED UPON SUCH
38 ENTITY'S BUSINESS CONDUCT, DECLARATIONS OF DEFAULT ON ANY CONTRACT MADE
39 BY ANY GOVERNMENTAL ENTITY, DETERMINATIONS OF INELIGIBILITY TO BID OR
40 PROPOSE ON CONTRACTS AND WHETHER ANY PROCEEDINGS TO DETERMINE ELIGIBIL-
41 ITY TO BID OR PROPOSE ON CONTRACTS ARE PENDING.

42 P. THE NAME AND TELEPHONE NUMBER OF THE CHIEF CONTRACTING OFFICER OR
43 OTHER EMPLOYEE OF THE AGENCY OR AUTHORITY RESPONSIBLE FOR SUPERVISION OF
44 THOSE CHARGED WITH DAY-TO-DAY MANAGEMENT OF THE CONTRACT.

45 Q. JUDGMENTS, MEDIATION AND ARBITRATION DECISIONS AND AWARDS AND
46 INJUNCTIONS, ISSUED WITHIN THE PRIOR FIVE YEARS, IN ANY JUDICIAL ACTIONS
47 OR PROCEEDINGS AND IN ANY MEDIATION OR ARBITRATION PROCEEDINGS AND
48 INITIATED BY ANY AGENCY OR PUBLIC OFFICER AGAINST THE CONTRACTOR WITH
49 RESPECT TO A CONTRACT AND ANY SUCH JUDICIAL ACTIONS OR PROCEEDINGS AND
50 MEDIATION OR ARBITRATION PROCEEDINGS THAT ARE PRESENTLY PENDING OR FOR
51 WHICH NOTICE OF CLAIM HAS BEEN RECEIVED.

52 R. RECORD OF ALL SANCTIONS IMPOSED WITHIN THE PRIOR FIVE YEARS AS A
53 RESULT OF JUDICIAL OR ADMINISTRATIVE DISCIPLINARY PROCEEDINGS WITH
54 RESPECT TO ANY PROFESSIONAL LICENSES HELD BY THE CONTRACTOR, OR A PRIN-
55 CIPAL OWNER OR OFFICER OF THE CONTRACTOR.

1 S. WHETHER STATE OF NEW YORK INCOME TAX RETURNS, WHERE REQUIRED, HAVE
2 BEEN FILED FOR THE PAST FIVE YEARS.

3 T. OUTSTANDING TAX WARRANTS AND UNSATISFIED TAX LIENS, AS REFLECTED IN
4 THE RECORDS OF THE STATE.

5 U. INFORMATION FROM PUBLIC REPORTS OF THE ORGANIZED CRIME CONTROL
6 BUREAU AND THE NEW YORK STATE ORGANIZED CRIME TASK FORCE THAT INDICATES
7 INVOLVEMENT IN CRIMINAL ACTIVITY.

8 V. CRIMINAL PROCEEDINGS PENDING AGAINST THE CONTRACTOR AND ANY PRINCIPAL
9 OWNER OR OFFICER OF SUCH CONTRACTOR.

10 W. RECORD OF ALL CRIMINAL CONVICTIONS OF THE CONTRACTOR, ANY CURRENT
11 PRINCIPAL OWNER OR OFFICER FOR ANY CRIME RELATED TO TRUTHFULNESS OR
12 BUSINESS CONDUCT AND FOR ANY OTHER FELONY COMMITTED WITHIN THE PRIOR TEN
13 YEARS, AND OF ANY FORMER PRINCIPAL OWNER OR OFFICER, WITHIN THE PRIOR
14 TEN YEARS, FOR ANY CRIME RELATED TO TRUTHFULNESS OR BUSINESS CONDUCT AND
15 FOR ANY OTHER FELONY COMMITTED WHILE HE OR SHE HELD SUCH POSITION OR
16 STATUS.

17 X. ALL PENDING BANKRUPTCY PROCEEDINGS AND ALL BANKRUPTCY PROCEEDINGS
18 INITIATED WITHIN THE PAST SEVEN YEARS BY OR AGAINST THE CONTRACTOR AND
19 ITS AFFILIATES.

20 Y. WHETHER THE CONTRACTOR HAS CERTIFIED THAT IT WAS NOT FOUNDED OR
21 ESTABLISHED OR IS NOT OPERATED IN A MANNER TO EVADE THE APPLICATION OR
22 TO DEFEAT THE PURPOSE OF THIS SECTION AND IS NOT THE SUCCESSOR, ASSIGNEE
23 OR AFFILIATE OF AN ENTITY WHICH IS INELIGIBLE TO BID OR PROPOSE ON
24 CONTRACTS OR AGAINST WHICH A PROCEEDING TO DETERMINE ELIGIBILITY TO BID
25 OR PROPOSE ON CONTRACTS IS PENDING.

26 Z. THE NAME AND MAIN BUSINESS ADDRESS OF ANYONE WHO THE CONTRACTOR
27 RETAINED, EMPLOYED OR DESIGNATED TO INFLUENCE THE PREPARATION OF
28 CONTRACT SPECIFICATIONS OR THE SOLICITATION OR AWARD OF THIS CONTRACT.

29 3. WHEN PERSONNEL FROM ANY AGENCY OR PUBLIC AUTHORITY LEARN THAT THE
30 CERTIFICATION REQUIRED BY PARAGRAPH Y OF SUBDIVISION TWO OF THIS SECTION
31 MAY NOT BE TRUTHFUL, THE APPROPRIATE LAW ENFORCEMENT OFFICIAL SHALL BE
32 IMMEDIATELY INFORMED OF SUCH FACT AND THE FACT OF SUCH NOTIFICATION
33 SHALL BE REFLECTED IN THE DATABASE, EXCEPT WHEN CONFIDENTIALITY IS
34 REQUESTED BY THE LAW ENFORCEMENT OFFICIAL.

35 4. INFORMATION REQUIRED FROM A CONTRACTOR CONSISTING OF A CONTRACTOR'S
36 SOCIAL SECURITY NUMBER SHALL BE OBTAINED BY THE AGENCY OR PUBLIC AUTHORITY
37 ENTERING INTO A CONTRACT AS PART OF THE ADMINISTRATION OF THE TAXES
38 ADMINISTERED BY THE STATE COMMISSIONER OF TAXATION AND FINANCE FOR THE
39 PURPOSE OF ESTABLISHING THE IDENTIFICATION OF PERSONS AFFECTED BY SUCH
40 TAXES.

41 5. IN THE EVENT THAT PROCUREMENT OF GOODS, SERVICES OR CONSTRUCTION
42 MUST BE MADE ON AN EMERGENCY BASIS, THE REQUIRED INFORMATION MAY BE
43 SUBMITTED AFTER AWARD OF THE CONTRACT. HOWEVER, ALL OF THE INFORMATION
44 REQUIRED BY SUBDIVISION TWO OF THIS SECTION SHALL BE SUBMITTED NO LATER
45 THAN THIRTY DAYS FROM THE DATE OF THE AWARD.

46 6. WHERE A CONTRACTOR OR SUBCONTRACTOR BECOMES OBLIGATED TO SUBMIT
47 INFORMATION REQUIRED BY THIS SUBDIVISION BY REASON OF HAVING BEEN
48 AWARDED A CONTRACT OR SUBCONTRACT, THE VALUE OF WHICH, WHEN AGGREGATED
49 WITH THE VALUE OF ALL OTHER CONTRACTS OR SUBCONTRACTS AWARDED TO THAT
50 CONTRACTOR OR SUBCONTRACTOR DURING THE IMMEDIATELY PRECEDING
51 TWELVE-MONTH PERIOD, IS VALUED AT ONE HUNDRED THOUSAND DOLLARS, OR MORE,
52 SUCH INFORMATION SHALL BE SUBMITTED NO LATER THAN THIRTY DAYS AFTER
53 REGISTRATION OF THE CONTRACT WHICH RESULTED IN THE OBLIGATION TO SUBMIT
54 SUCH INFORMATION. A CONTRACTOR OR SUBCONTRACTOR WHO FAILS TO PROVIDE
55 SUCH INFORMATION AS REQUIRED BY THIS SUBDIVISION SHALL BE INELIGIBLE TO

BID OR PROPOSE ON A CONTRACT OR SUBCONTRACT UNTIL SUCH INFORMATION IS PROVIDED.

7. NO CONTRACT FOR GOODS OR SERVICES INVOLVING THE EXPENDITURE OF MORE THAN TEN THOUSAND DOLLARS OR IN THE CASE OF CONSTRUCTION, REPAIR, REHABILITATION OR ALTERATION, THE EXPENDITURE OF MORE THAN FIFTEEN THOUSAND DOLLARS, FRANCHISE OR CONCESSION SHALL BE LET BY AN AGENCY OR PUBLIC AUTHORITY, UNLESS THE CONTRACT MANAGER OR OTHER PERSON RESPONSIBLE FOR MAKING THE RECOMMENDATION FOR AWARD HAS CERTIFIED THAT THESE COMPUTERIZED DATABASES AND THE INFORMATION MAINTAINED PURSUANT TO THIS SECTION HAVE BEEN EXAMINED.

8. NOTHING IN THIS SECTION SHALL BE DEEMED TO REQUIRE THE DISCLOSURE OF INFORMATION THAT IS CONFIDENTIAL OR PRIVILEGED OR THE DISCLOSURE OF WHICH WOULD BE CONTRARY TO LAW IN THE ABSENCE OF THIS SECTION.

9. ANY CONTRACTOR OR SUBCONTRACTOR THAT HAS SUBMITTED TO ANY AGENCY OR PUBLIC AUTHORITY THE INFORMATION REQUIRED TO BE PROVIDED IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION SHALL BE REQUIRED TO UPDATE THAT INFORMATION ONLY AT THREE-YEAR INTERVALS, EXCEPT THAT INFORMATION REQUIRED BY PARAGRAPHS N, O, Q, R, V, W AND X OF SUBDIVISION TWO OF THIS SECTION SHALL BE UPDATED EACH TIME THE CONTRACTOR OR SUBCONTRACTOR IS CONSIDERED FOR THE AWARD OF ANOTHER CONTRACT OR SUBCONTRACT, EXCEPT AS PROVIDED IN SUBDIVISION FIVE OR SIX OF THIS SECTION, AND NO CONTRACT OR SUBCONTRACT SHALL BE AWARDED UNLESS THE CONTRACTOR OR SUBCONTRACTOR HAS CERTIFIED THAT INFORMATION PREVIOUSLY SUBMITTED AS TO THOSE REQUIREMENTS IS CORRECT AT THE TIME OF THE AWARD OF THE CONTRACT OR SUBCONTRACT.

10. EXCEPT AS OTHERWISE PROVIDED, FOR THE PURPOSES OF THIS SECTION:

A. "AFFILIATE" SHALL MEAN AN ENTITY IN WHICH THE PARENT OF THE CONTRACTOR OWNS MORE THAN FIFTY PERCENT OF THE VOTING STOCK, OR AN ENTITY IN WHICH A GROUP OF PRINCIPAL OWNERS WHICH OWNS MORE THAN FIFTY PERCENT OF THE CONTRACTOR ALSO OWNS MORE THAN FIFTY PERCENT OF THE VOTING STOCK.

B. "CAUTIONARY INFORMATION" SHALL MEAN, IN REGARD TO A CONTRACTOR, ANY ADVERSE ACTION BY ANY AGENCY OR PUBLIC AUTHORITY, INCLUDING BUT NOT LIMITED TO POOR PERFORMANCE EVALUATION, DEFAULT, NON-RESPONSIBILITY DETERMINATION, DEBARMENT, SUSPENSION, WITHDRAWAL OF PREQUALIFIED STATUS, OR DENIAL OF PREQUALIFIED STATUS.

C. "CONTRACT" SHALL MEAN AND INCLUDE ANY AGREEMENT BETWEEN AN AGENCY OR PUBLIC AUTHORITY AND A CONTRACTOR, OR ANY AGREEMENT BETWEEN SUCH A CONTRACTOR AND A SUBCONTRACTOR, WHICH (I) IS FOR THE PROVISION OF GOODS, SERVICES OR CONSTRUCTION AND HAS A VALUE THAT WHEN AGGREGATED WITH THE VALUES OF ALL OTHER SUCH AGREEMENTS WITH THE SAME CONTRACTOR OR SUBCONTRACTOR AND ANY FRANCHISES OR CONCESSIONS AWARDED TO SUCH CONTRACTOR OR SUBCONTRACTOR DURING THE IMMEDIATELY PRECEDING TWELVE-MONTH PERIOD IS VALUED AT ONE HUNDRED THOUSAND DOLLARS OR MORE; OR (II) IS FOR THE PROVISION OF GOODS, SERVICES OR CONSTRUCTION IS AWARDED TO A SOLE SOURCE AND IS VALUED AT TEN THOUSAND DOLLARS OR MORE; OR (III) IS A CONCESSION AND HAS A VALUE THAT WHEN AGGREGATED WITH THE VALUE OF ALL OTHER CONTRACTS HELD BY THE SAME CONCESSIONAIRE IS VALUED AT ONE HUNDRED THOUSAND DOLLARS OR MORE; OR (IV) IS A FRANCHISE.

D. "CONTRACTOR" SHALL MEAN AND INCLUDE ALL INDIVIDUALS, SOLE PROPRIETORSHIPS, PARTNERSHIPS, JOINT VENTURES OR CORPORATIONS WHO ENTER INTO A CONTRACT, AS DEFINED IN PARAGRAPH C OF THIS SUBDIVISION, WITH AN AGENCY OR PUBLIC AUTHORITY.

E. "OFFICER" SHALL MEAN ANY INDIVIDUAL WHO SERVES AS CHIEF EXECUTIVE OFFICER, CHIEF FINANCIAL OFFICER, OR CHIEF OPERATING OFFICER OF THE CONTRACTOR, BY WHATEVER TITLES KNOWN.

1 F. "PARENT" SHALL MEAN AN INDIVIDUAL PARTNERSHIP, JOINT VENTURE OR
2 CORPORATION, WHICH OWNS MORE THAN FIFTY PERCENT OF THE VOTING STOCK OF A
3 CONTRACTOR.

4 G. "PRINCIPAL OWNER" SHALL MEAN AN INDIVIDUAL, PARTNERSHIP, JOINT
5 VENTURE OR CORPORATION WHICH HOLDS A TEN PERCENT OR GREATER OWNERSHIP
6 INTEREST IN A CONTRACTOR OR SUBCONTRACTOR.

7 H. "SUBCONTRACT" SHALL MEAN ANY CONTRACT, AS DEFINED IN PARAGRAPH C OF
8 THIS SUBDIVISION, BETWEEN A SUBCONTRACTOR AND A CONTRACTOR.

9 I. "SUBCONTRACTOR" SHALL MEAN AN INDIVIDUAL, SOLE PROPRIETORSHIP,
10 PARTNERSHIP, JOINT VENTURE OR CORPORATION WHICH IS ENGAGED BY A CONTRAC-
11 TOR PURSUANT TO A CONTRACT, AS DEFINED IN PARAGRAPH C OF THIS SUBDIVI-
12 SION.

13 11. THE STATE COMPTROLLER MAY ENTER INTO COOPERATIVE AGREEMENTS FOR
14 THE EXCHANGE OF INFORMATION WITH ANY MUNICIPALITY THAT MAINTAINS A DATA-
15 BASE SUBSTANTIALLY SIMILAR TO THE ONE REQUIRED BY THIS SECTION.

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