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

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:

Section 1. This act shall be known and may be cited as the "Responsible Bidders Database Act".

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

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

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

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

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

C. ANY OTHER NAMES UNDER WHICH THE CONTRACTOR HAS CONDUCTED BUSINESS 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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D. THE ADDRESSES AND TELEPHONE NUMBERS OF ALL PRINCIPAL PLACES OF BUSINESS AND PRIMARY PLACES OF BUSINESS IN NEW YORK STATE, IF DIFFERENT, WHERE THE CONTRACTOR HAS CONDUCTED BUSINESS WITHIN THE PRIOR FIVE YEARS.

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

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

G. THE TYPE OF BUSINESS ENTITY OF THE CONTRACTOR, INCLUDING, BUT NOT LIMITED TO, SOLE PROPRIETORSHIP, PARTNERSHIP, JOINT VENTURE OR CORPORATION.

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

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

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

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

L. THE PRINCIPAL OWNERS AND OFFICERS OF EVERY SUBCONTRACTOR.

M. THE TYPE, AMOUNT AND CONTRACT REGISTRATION NUMBER OF ALL OTHER CONTRACTS AWARDED TO THE CONTRACTOR, AS REFLECTED IN THE DATABASE MAINTAINED PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

N. THE CONTRACT SANCTION HISTORY OF THE CONTRACTOR FOR THE PRIOR FIVE YEARS, INCLUDING, BUT NOT LIMITED TO, ALL CAUTIONS, SUSPENSIONS, DEBARMENTS, CANCELLATIONS OF A CONTRACT BASED UPON THE CONTRACTOR'S BUSINESS CONDUCT, DECLARATIONS OF DEFAULT ON ANY CONTRACT MADE BY ANY GOVERNMENTAL ENTITY, DETERMINATIONS OF INELIGIBILITY TO BID OR PROPOSE ON CONTRACTS, AND WHETHER ANY PROCEEDINGS TO DETERMINE ELIGIBILITY TO BID OR PROPOSE ON CONTRACTS ARE PENDING.

O. THE CONTRACT SANCTION HISTORY FOR THE PRIOR FIVE YEARS OF AFFILIATES OF THE CONTRACTOR INCLUDING, BUT NOT LIMITED TO, ALL CAUTIONS, SUSPENSIONS, DEBARMENTS, CANCELLATIONS OF A CONTRACT BASED UPON SUCH ENTITY'S BUSINESS CONDUCT, DECLARATIONS OF DEFAULT ON ANY CONTRACT MADE BY ANY GOVERNMENTAL ENTITY, DETERMINATIONS OF INELIGIBILITY TO BID OR PROPOSE ON CONTRACTS AND WHETHER ANY PROCEEDINGS TO DETERMINE ELIGIBILITY TO BID OR PROPOSE ON CONTRACTS ARE PENDING.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. "SUBCONTRACTOR" SHALL MEAN AN INDIVIDUAL, SOLE PROPRIETORSHIP, PARTNERSHIP, JOINT VENTURE OR CORPORATION WHICH IS ENGAGED BY A CONTRACTOR PURSUANT TO A CONTRACT, AS DEFINED IN PARAGRAPH C OF THIS SUBDIVISION.

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

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