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

4891

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend 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 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

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

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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.

4. ALL BONDS SHALL BE DEPOSITED BY THE PUBLIC OWNER IN AN INTEREST-BEARING INSTRUMENT. ANY INTEREST GAINED SHALL BE RETURNED TO THE CONTRACTING ENTITY WHICH POSTED THE PERFORMANCE BOND.

5. FOR THE PURPOSES OF THIS SECTION, THE TERM "PUBLIC OWNER" SHALL MEAN ALL CONTRACTS MADE AND AWARDED BY THE STATE, OR BY ANY PUBLIC DEPARTMENT, OR ANY PUBLIC BENEFIT CORPORATION, OR BY ANY PUBLIC CORPORATION, MUNICIPALITY OR POLITICAL SUBDIVISION THEREOF, OR BY ANY OFFICIAL THEREOF, FOR CONSTRUCTION, RECONSTRUCTION OR ALTERATION OF ANY PUBLIC WORK CONTRACT.

6. THE PUBLIC OWNER SHALL BE HELD HARMLESS AND SHALL INDEMNIFY ANY OFFICER OR EMPLOYEE FOR ANY LOSS IN INTEREST OR THE AMOUNT OF THE PERFORMANCE BOND AS A RESULT OF THE INVESTMENT OF SUCH BOND PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

S 2. 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.