

5013

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sens. STACHOWSKI, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law and the general municipal law, in relation to the definition of lowest responsible bidder and unfair labor practices for purposes of public works projects

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

- 1 Section 1. The labor law is amended by adding a new section 201-g to
2 read as follows:
3 S 201-G. DETERMINATION OF LOWEST RESPONSIBLE BIDDER. 1. WHENEVER
4 SELECTION OF THE LOWEST RESPONSIBLE BIDDER IS REQUIRED UNDER SECTION ONE
5 HUNDRED THREE OF THE GENERAL MUNICIPAL LAW, A PERSON, FIRM, CORPORATION,
6 SUCCESSOR CORPORATION, CONTRACTOR OR SUBCONTRACTOR SHALL NOT QUALIFY AS
7 A RESPONSIBLE BIDDER IF IT HAS COMMITTED ANY OF THE FOLLOWING VIOLATIONS
8 WITHIN A THREE YEAR PERIOD PRECEDING THE AWARD OF THE CONTRACT:
9 (A) A VIOLATION OF ANY PROVISION OF ARTICLE EIGHT OF THIS CHAPTER;
10 (B) A VIOLATION OF ANY STATE OR FEDERAL LABOR LAW INCLUDING BUT NOT
11 LIMITED TO OCCUPATIONAL SAFETY AND HEALTH; WAGES; CHILD LABOR; WORKERS'
12 COMPENSATION; UNEMPLOYMENT COMPENSATION; ORGANIZATIONAL RIGHTS; AND
13 LABOR STANDARDS;
14 (C) A VIOLATION OF ANY STATE OR FEDERAL LAW RELATING TO BID COLLUSION
15 OR RESTRAINT OF TRADE;
16 (D) A VIOLATION OF ANY STATE OR FEDERAL ENVIRONMENTAL LAW;
17 (E) A CRIMINAL CONVICTION OF ANY STATE OR FEDERAL LAW FOR ANY CONDUCT
18 RELATING TO BIDDING OR CONSTRUCTION-RELATED WORK BY THE BIDDER;
19 (F) AN OUTSTANDING DISQUALIFICATION FROM BIDDING ON ANY PUBLIC WORK
20 CONTRACT; OR
21 (G) A VIOLATION OF ANY STATE OR FEDERAL CIVIL RIGHTS, EMPLOYMENT DISA-
22 BILITY OR MINORITY PREFERENCE LAW.
23 2. THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL NOT DIMIN-
24 ISH THE DISCRETION OF THE AWARING AUTHORITY TO DISQUALIFY A BIDDER ON
25 OTHER GROUNDS WHICH THE AUTHORITY FINDS APPROPRIATE WHICH SHALL INCLUDE
26 BUT NOT BE LIMITED TO:

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

LBD03197-01-9

1 (A) LACK OF SUFFICIENT EXPERTISE, PRIOR EXPERIENCE WITH COMPARABLE
2 PROJECTS, OR SUFFICIENT RESOURCES TO PERFORM THE CONTRACT IN A TIMELY
3 AND COMPETENT MANNER;

4 (B) WHETHER THE BIDDER'S EMPLOYEES ARE PROPERLY TRAINED AND WHETHER
5 THE EQUIPMENT TO BE USED IS SAFE AND IN GOOD OPERATING CONDITION;

6 (C) WHETHER THE BIDDER HAS SUBMITTED A BID THAT IS MATHEMATICALLY OR
7 MATERIALLY UNBALANCED;

8 (D) SUBMISSION OF A BID SO MUCH LOWER THAN THE AGENCY'S ENGINEER'S
9 ESTIMATE THAT IT SEEMS UNLIKELY THAT THE BIDDER WILL BE ABLE TO PERFORM
10 THE CONTRACT SATISFACTORILY AT THE PRICE BID; OR

11 (E) PRESENTATION OF ANY FALSE OR MISLEADING STATEMENTS TO THE AGENCY
12 AWARDING THE CONTRACT IN CONNECTION WITH THE BID.

13 3. NO PERSON ACTING ON BEHALF OF A BIDDER SHALL LOBBY THE CONSTRUCTING
14 GOVERNMENTAL ENTITY FOR THE PURPOSE OF ASSISTING SUCH BIDDER IN SECURING
15 A BID. NO BID SHALL INCLUDE ANY COSTS ATTRIBUTABLE TO LOBBYING.

16 4. ANY PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION, LABOR ORGAN-
17 IZATION, CONTRACTOR OR SUBCONTRACTOR MAY, WITHIN TEN DAYS AFTER A BID IS
18 ACCEPTED, FILE AN APPLICATION TO CHALLENGE THE DETERMINATION UNDER
19 SECTION ONE HUNDRED THREE OF THE GENERAL MUNICIPAL LAW THAT THE BIDDER
20 CHOSEN WAS THE LOWEST RESPONSIBLE BIDDER. UPON RECEIPT OF SUCH APPLICA-
21 TION, THE COMMISSIONER OR CHIEF EXECUTIVE OFFICER OF THE PUBLIC ENTITY
22 SHALL CONDUCT A HEARING TO DETERMINE THE VALIDITY OF THE APPLICATION.
23 NOTICE SHALL BE GIVEN TO THE APPLICANT AND TO THE PROPOSED LOWEST
24 RESPONSIBLE BIDDER OF THE DATE, TIME AND PLACE OF THE HEARING. THE
25 APPLICANT AND THE PROPOSED LOWEST RESPONSIBLE BIDDER SHALL BE GIVEN THE
26 OPPORTUNITY TO PRESENT EVIDENCE AND WITNESSES ON THEIR BEHALF. THE
27 COMMISSIONER OR CHIEF EXECUTIVE OFFICER PRESIDING OVER SUCH HEARING
28 SHALL ISSUE A WRITTEN DECISION WITH FINDINGS OF FACT WHETHER THE
29 PROPOSED LOWEST RESPONSIBLE BIDDER IS RESPONSIBLE. SUCH CONTRACT SHALL
30 NOT BE AWARDED PRIOR TO SUCH DECISION. THE AWARDING AUTHORITY SHALL
31 NOTIFY ALL BIDDERS REGARDING THE SELECTION OF ITS PROPOSED LOWEST
32 RESPONSIBLE BIDDER.

33 S 2. Subdivision 1 of section 103 of the general municipal law, as
34 amended by chapter 741 of the laws of 2005, is amended to read as
35 follows:

36 1. Except as otherwise expressly provided by an act of the legislature
37 or by a local law adopted prior to September first, nineteen hundred
38 fifty-three, all contracts for public work involving an expenditure of
39 more than twenty thousand dollars and all purchase contracts involving
40 an expenditure of more than ten thousand dollars, shall be awarded by
41 the appropriate officer, board or agency of a political subdivision or
42 of any district therein including but not limited to a soil conservation
43 district, to the lowest responsible bidder furnishing the required secu-
44 rity after advertisement for sealed bids in the manner provided by this
45 section. In any case where a responsible bidder's gross price is reduci-
46 ble by an allowance for the value of used machinery, equipment, appara-
47 tus or tools to be traded in by a political subdivision, the gross price
48 shall be reduced by the amount of such allowance, for the purpose of
49 determining the low bid. In cases where two or more responsible bidders
50 furnishing the required security submit identical bids as to price, such
51 officer, board or agency may award the contract to any of such bidders.
52 Such officer, board or agency may, in his or its discretion, reject all
53 bids and readvertise for new bids in the manner provided by this
54 section. For purposes of this section, "sealed bids", as that term
55 applies to purchase contracts, shall include bids submitted in an elec-
56 tronic format, provided that the governing board of the political subdi-

1 vision or district, by resolution, has authorized the receipt of bids in
2 such format. Submission in electronic format may not, however, be
3 required as the sole method for the submission of bids. Bids submitted
4 in an electronic format shall be transmitted by bidders to the receiving
5 device designated by the political subdivision or district. Any method
6 used to receive electronic bids shall comply with article three of the
7 state technology law, and any rules and regulations promulgated and
8 guidelines developed thereunder and, at a minimum, must (a) document the
9 time and date of receipt of each bid received electronically; (b)
10 authenticate the identity of the sender; (c) ensure the security of the
11 information transmitted; and (d) ensure the confidentiality of the bid
12 until the time and date established for the opening of bids. The timely
13 submission of an electronic bid in compliance with instructions provided
14 for such submission in the advertisement for bids and/or the specifica-
15 tions shall be the responsibility solely of each bidder or prospective
16 bidder. No political subdivision or district therein shall incur any
17 liability from delays of or interruptions in the receiving device desig-
18 nated for the submission and receipt of electronic bids. FOR PURPOSES
19 OF THIS SECTION, THE TERM "LOWEST RESPONSIBLE BIDDER" SHALL MEAN ANY
20 PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION, CONTRACTOR OR SUBCON-
21 TRACTOR WHO (I) SUBMITS THE LOWEST BID FOR A PUBLIC WORK CONTRACT AND
22 (II) IS NOT DISQUALIFIED ON GROUNDS PROVIDED IN SECTION TWO HUNDRED
23 ONE-G OF THE LABOR LAW.

24 S 3. Subdivision 1 of section 103 of the general municipal law, as
25 amended by chapter 413 of the laws of 1991, is amended to read as
26 follows:

27 1. Except as otherwise expressly provided by an act of the legislature
28 or by a local law adopted prior to September first, nineteen hundred
29 fifty-three, all contracts for public work involving an expenditure of
30 more than twenty thousand dollars and all purchase contracts involving
31 an expenditure of more than ten thousand dollars, shall be awarded by
32 the appropriate officer, board or agency of a political subdivision or
33 of any district therein including but not limited to a soil conservation
34 district, to the lowest responsible bidder furnishing the required secu-
35 rity after advertisement for sealed bids in the manner provided by this
36 section. In any case where a responsible bidder's gross price is reduc-
37 ible by an allowance for the value of used machinery, equipment, appa-
38 ratus or tools to be traded in by a political subdivision, the gross price
39 shall be reduced by the amount of such allowance, for the purpose of
40 determining the low bid. In cases where two or more responsible bidders
41 furnishing the required security submit identical bids as to price, such
42 officer, board or agency may award the contract to any of such bidders.
43 Such officer, board or agency may, in his or its discretion, reject all
44 bids and readvertise for new bids in the manner provided by this
45 section. FOR PURPOSES OF THIS SECTION, THE TERM "LOWEST RESPONSIBLE
46 BIDDER" SHALL MEAN ANY PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION,
47 CONTRACTOR OR SUBCONTRACTOR WHO (A) SUBMITS THE LOWEST BID FOR A PUBLIC
48 WORK CONTRACT AND (B) IS NOT DISQUALIFIED ON GROUNDS PROVIDED IN SECTION
49 TWO HUNDRED ONE-G OF THE LABOR LAW.

50 S 4. This act shall take effect on the first of September next
51 succeeding the date on which it shall have become a law; provided that
52 the amendments to subdivision 1 of section 103 of the general municipal
53 law made by section two of this act shall be subject to the expiration
54 and reversion of such subdivision pursuant to section 41 of part X of
55 chapter 62 of the laws of 2003, as amended, when such date the
56 provisions of section three of this act shall take effect.