

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

5559--A

2009-2010 Regular Sessions

I N S E N A T E

May 15, 2009

Introduced by Sens. OPPENHEIMER, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law and the general municipal law, in relation to assignment of contracts by school districts; to amend chapter 738 of the laws of 1988, amending the administrative code of the city of New York and other laws relating to establishing the New York city school construction authority, in relation to extending certain provisions of such chapter relating to certain contracts of the authority; to amend the public authorities law, in relation to extending certain provisions regarding the award of construction contracts by the New York city school construction authority and providing for the repeal of certain provisions upon expiration thereof

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

1 Section 1. Section 305 of the education law is amended by adding a new
2 subdivision 42 to read as follows:
3 42. THE COMMISSIONER SHALL COMMISSION A SURVEY ON THE IMPACT OF
4 EXEMPTING SCHOOL DISTRICTS FROM THE SEPARATE BIDDING REQUIREMENTS OF THE
5 GENERAL MUNICIPAL LAW PURSUANT TO THE PROVISIONS OF SUBDIVISION SIX OF
6 SECTION ONE HUNDRED ONE OF THE GENERAL MUNICIPAL LAW. SUCH STUDY SHALL
7 INCLUDE THE IMPACT ON TIMEFRAMES FOR COMPLETING CONSTRUCTION AND
8 IMPROVEMENT PROJECTS, THE OVERALL COSTS OF SUCH PROJECTS AND THE INTEG-
9 RITY OF THE BIDDING PROCESS. THE COMMISSIONER SHALL ISSUE THE RESULTS OF
10 SUCH SURVEY TO THE GOVERNOR, THE STATE COMPTROLLER, THE TEMPORARY PRESI-
11 DENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY IN THE FOURTH YEAR
12 FOLLOWING THE EFFECTIVE DATE OF THIS SUBDIVISION.
13 S 2. Section 101 of the general municipal law is amended by adding a
14 new subdivision 6 to read as follows:

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

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1 6. A. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION AND ANY OTHER
2 LAW TO THE CONTRARY, ANY CONTRACT, SUBCONTRACT, LEASE, GRANT, BOND,
3 COVENANT, OR OTHER AGREEMENT FOR PROJECTS UNDERTAKEN BY SCHOOL DISTRICTS
4 SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF SEPARATE SPECIFICATIONS
5 (REFERRED TO AS THE WICKS LAW).

6 B. WHERE A SCHOOL DISTRICT ELECTS TO PROVIDE FOR THE ASSIGNMENT OF A
7 CONTRACT TO A SINGLE PERSON, FIRM OR CORPORATION PURSUANT TO PARAGRAPH A
8 OF THIS SUBDIVISION, SUCH SCHOOL DISTRICT MAY REQUIRE THE APPARENT LOW
9 BIDDER AND, AT THE DISCRETION OF THE SCHOOL DISTRICT, THE NEXT APPARENT
10 LOW BIDDER, TO SUBMIT TO THE DISTRICT THE NAMES OF THE BIDDER'S PROPOSED
11 SUBCONTRACTORS FOR THE ELECTRICAL WORK, HEATING, VENTILATING AND AIR
12 CONDITIONING WORK, AND THE PLUMBING WORK. ONLY ONE PROPOSED SUBCONTRACTOR
13 SHALL BE NAMED FOR EACH SUCH TRADE. SUCH PROPOSED SUBCONTRACTOR OR
14 SUBCONTRACTORS MAY BE REJECTED BY THE SCHOOL DISTRICT ON THE BASIS SET
15 FORTH IN PARAGRAPH E OF THIS SUBDIVISION. UPON REJECTION OF A PROPOSED
16 SUBCONTRACTOR OR SUBCONTRACTORS, THE SCHOOL DISTRICT MAY REQUIRE THE
17 APPARENT LOW BIDDER TO SUBMIT AN ALTERNATE PROPOSED SUBCONTRACTOR OR
18 SUBCONTRACTORS WITHIN FORTY-EIGHT HOURS. SHOULD THE APPARENT LOW BIDDER
19 FAIL TO PROPOSE ALTERNATE SUBCONTRACTORS SUBJECT TO APPROVAL BY THE
20 SCHOOL DISTRICT, THE SCHOOL DISTRICT MAY CONSIDER THE NEXT APPARENT LOW
21 BIDDER AND SHALL FOLLOW THE SAME PROCEDURE SET FORTH IN THIS PARAGRAPH.
22 SUCH PROPOSED SUBCONTRACTORS OF THE BIDDER, APPROVED BY THE SCHOOL
23 DISTRICT SHALL BE USED ON THE WORK FOR WHICH THEY WERE PROPOSED AND
24 APPROVED, AND THEY SHALL NOT BE CHANGED EXCEPT WITH THE SPECIFIC WRITTEN
25 APPROVAL OF THE DISTRICT.

26 C. PAYMENT TO THE SUBCONTRACTORS APPROVED PURSUANT TO PARAGRAPH B OF
27 THIS SUBDIVISION SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF SECTION
28 ONE HUNDRED SIX-B OF THIS ARTICLE. IN THE EVENT ANY SUCH SUBCONTRACTOR
29 IS NOT PAID BY THE CONTRACTOR, THE SUBCONTRACTOR SHALL IMMEDIATELY NOTI-
30 FY THE SCHOOL DISTRICT OF SUCH FACT.

31 D. WITH THE SUBMISSION OF THE NAMES OF THE PROPOSED SUBCONTRACTORS AS
32 PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, THE BIDDER SHALL SPECIFY
33 THE AMOUNT TO BE PAID TO EACH SUBCONTRACTOR FOR THE WORK TO BE PERFORMED
34 BY SUCH SUBCONTRACTOR.

35 E. A SCHOOL DISTRICT MAY REJECT ANY OR ALL BIDS OR WAIVE ANY INFORMAL-
36 ITY IN A BID IF THE SCHOOL DISTRICT REASONABLY BELIEVES THAT THE PUBLIC
37 INTEREST WILL BE PROMOTED THEREBY. A SCHOOL DISTRICT MAY REJECT ANY BID
38 IF, IN THE JUDGMENT OF THE SCHOOL DISTRICT, THE BUSINESS ORGANIZATION,
39 RESOURCES, FINANCIAL STANDING, OR EXPERIENCE OF THE BIDDER JUSTIFIES
40 SUCH REJECTION IN VIEW OF THE WORK TO BE PERFORMED.

41 F. THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO THE NEW YORK
42 CITY SCHOOL CONSTRUCTION AUTHORITY ESTABLISHED PURSUANT TO TITLE SIX OF
43 ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW.

44 S 3. Section 19 of chapter 738 of the laws of 1988, amending the
45 administrative code of the city of New York and other laws relating to
46 establishing the New York city school construction authority, as amended
47 by chapter 134 of the laws of 2004, is amended to read as follows:

48 S 19. This act shall take effect immediately, provided, however, that
49 the provisions of subdivision 6 of section 209 of the civil service law,
50 as added by section four of this act, shall expire and be deemed
51 repealed on and after June 30, 1995, and further provided that the
52 provisions of section 1735 of the public authorities law, as added by
53 section fourteen of this act, shall expire and be deemed repealed on
54 June 30, [2009] 2014.

1 S 4. Subdivision 1 of section 1735 of the public authorities law, as
2 amended by chapter 410 of the laws of 1999, is amended to read as
3 follows:

4 1. Notwithstanding the provisions of paragraph b of subdivision one of
5 section seventeen hundred thirty-four of this title, the award of
6 construction contracts by the authority between July first, nineteen
7 hundred eighty-nine and June thirtieth, two thousand [two] FOURTEEN,
8 shall not be subject to the provisions of section one hundred one of the
9 general municipal law.

10 S 5. This act shall take effect immediately; provided that sections
11 one and two of this act shall take effect on the one hundred eightieth
12 day after they shall have become law, and shall apply to all contracts
13 advertised or solicited for bid on or after such effective date;
14 provided that the provisions of sections one and two of this act shall
15 expire and be deemed repealed 5 years after such effective date;
16 provided further that the amendments to subdivision 1 of section 1735 of
17 the public authorities law made by section four of this act shall not
18 affect the expiration of such section and shall be deemed repealed ther-
19 ewith.