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I N S E N A T E

January 8, 2010

Introduced by Sens. STACHOWSKI, ONORATO, BRESLIN, DUANE, FOLEY, HUNTLEY, OPPENHEIMER, PARKER, SAVINO, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law and the general municipal law, in relation to requirements for selecting the lowest responsible bidder for certain public works contracts

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

1 Section 1. The state finance law is amended by adding a new section
2 135-b to read as follows:

3 S 135-B. LOWEST RESPONSIBLE BIDDER. 1. DEFINITION. FOR THE PURPOSES OF
4 THIS ARTICLE, "LOWEST RESPONSIBLE BIDDER" SHALL MEAN THE PERSON, FIRM,
5 CORPORATION, CONTRACTOR OR SUBCONTRACTOR OR OTHER ENTITY SUBMITTING A
6 BID FOR A PUBLIC WORK CONTRACT FOR THE ERECTION, CONSTRUCTION, RECON-
7 STRUCTION OR ALTERATION OF BUILDINGS WHO:

8 A. SUBMITS THE LOWEST BID; AND
9 B. IS NOT DISQUALIFIED ON ANY OF THE GROUNDS LISTED UNDER SUBDIVISION
10 FIVE OF THIS SECTION.

11 2. USE OF QUESTIONNAIRE TO DETERMINE RESPONSIBILITY OF CONTRACTORS AND
12 SUBCONTRACTORS. A. NO PUBLIC WORK CONTRACT MAY BE AWARDED BY AN AGENCY,
13 DEPARTMENT, PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION, OFFICE OR
14 OTHER ENTITY OF THE STATE, TO THE LOWEST RESPONSIBLE BIDDER UNLESS EACH
15 CONTRACTOR AND SUBCONTRACTOR FOR THE CONTRACT SUBMITS, AND THE CONTRACT-
16 ING ENTITY REVIEWS, A QUESTIONNAIRE DEMONSTRATING ITS RESPONSIBILITY TO
17 PERFORM THE CONTRACT.

18 B. QUESTIONNAIRES MUST BE SUBMITTED TO THE CONTRACTING ENTITY AND TO
19 THE COMPTROLLER WHO SHALL MAINTAIN THE INFORMATION IN AN ELECTRONIC
20 DATABASE FOR REVIEW BY ANY STATE OR LOCAL CONTRACTING ENTITY THAT AWARDS
21 PUBLIC WORK CONTRACTS.

22 3. CONTENTS OF QUESTIONNAIRE. THE COMPTROLLER SHALL PREPARE A UNIFORM
23 QUESTIONNAIRE FOR USE BY STATE AND LOCAL CONTRACTING ENTITIES, WHICH
24 SHALL REQUIRE EACH CONTRACTOR AND SUBCONTRACTOR TO PROVIDE THE FOLLOWING
25 INFORMATION:

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

LBD15220-03-0

1 A. THE NAME, ADDRESS AND TELEPHONE NUMBER OF ITS PRINCIPALS, OWNERS,
2 OFFICERS, AND SHAREHOLDERS WHO OWN OR CONTROL AT LEAST FIVE PERCENT OF
3 THE STOCK OF THE CONTRACTOR OR SUBCONTRACTOR;

4 B. THE TAXPAYER IDENTIFICATION NUMBER OR EMPLOYER IDENTIFICATION
5 NUMBER, AND THE DUN AND BRADSTREET NUMBER OF THE CONTRACTOR OR SUBCON-
6 TRACTOR;

7 C. THE CONTRACTOR OR SUBCONTRACTOR'S TYPE OF BUSINESS ENTITY, INCLUD-
8 ING BUT NOT LIMITED TO CORPORATION, PARTNERSHIP, LIMITED LIABILITY
9 CORPORATION, LIMITED PARTNERSHIP, JOINT VENTURE OR SOLE PROPRIETOR;

10 D. THE NAMES AND ADDRESSES OF THE SUBCONTRACTORS PLANNED FOR THE
11 PROJECT;

12 E. THE USE OF REGISTERED AND APPROVED APPRENTICESHIP TRAINING PROGRAMS
13 FOR THE PAST FIVE YEARS;

14 F. ANY VIOLATIONS OF THE PREVAILING WAGE LAW UNDER ARTICLE EIGHT OF
15 THE LABOR LAW OR THE FEDERAL DAVIS-BACON ACT;

16 G. ANY VIOLATIONS OF STATE OR FEDERAL LAWS RELATING TO UNEMPLOYMENT
17 COMPENSATION, WORKERS' COMPENSATION, OCCUPATIONAL HEALTH AND SAFETY,
18 EMPLOYEE MISCLASSIFICATION, EMPLOYMENT DISABILITY, EMPLOYMENT DISCRIMI-
19 NATION, OR OTHER LABOR LAWS;

20 H. ANY VIOLATIONS OF STATE OR FEDERAL ENVIRONMENTAL PROTECTION LAWS;

21 I. ANY FAILURE TO FILE FEDERAL, STATE OR LOCAL TAX RETURNS, ANY TAX
22 LIABILITIES, JUDGMENTS OR LIENS, AND VIOLATIONS OF AGREEMENTS OR LAWS
23 UNDER WHICH A TAX CREDIT, TAX EXEMPTION, LOAN OR GRANT WAS AWARDED BY
24 ANY FEDERAL, STATE OR LOCAL ENTITY;

25 J. ANY CRIMINAL CONVICTION, INDICTMENT, GRANT OF IMMUNITY OR CIVIL
26 VIOLATION FOR BUSINESS-RELATED ACTIVITY, INCLUDING BUT NOT LIMITED TO
27 BRIBERY, EXTORTION, FRAUD, RACKETEERING, CONTRACT BIDDING AND RESTRAINT
28 OF TRADE;

29 K. CONTRACT SANCTION HISTORY INCLUDING FEDERAL OR STATE DEBARMENTS,
30 SUSPENSIONS, FINDINGS OF INELIGIBILITY, OR DISQUALIFICATIONS FOR
31 NON-COMPLIANCE WITH MINORITY-OWNED, WOMEN-OWNED OR DISADVANTAGED-OWNED
32 BUSINESS REQUIREMENTS;

33 L. ANY PENDING INVESTIGATIONS FOR CRIMINAL OR CIVIL VIOLATIONS OF ANY
34 STATE OR FEDERAL LAWS;

35 M. PROFESSIONAL LICENSE SANCTION HISTORY AGAINST ITS PRINCIPALS,
36 OWNERS AND OFFICERS;

37 N. EXPERTISE AND EXPERIENCE PERFORMING THE TYPE OF WORK REQUIRED UNDER
38 THE CONTRACT;

39 O. FINANCIAL CAPABILITY AND RELIABILITY INCLUDING FISCAL RESOURCES TO
40 PERFORM THE CONTRACT, AND ANY BANKRUPTCIES WITHIN THE PAST SEVEN YEARS;

41 P. PROOF OF SURETY BOND AND INSURANCE FOR WORKERS' COMPENSATION AND
42 GENERAL AND PROFESSIONAL LIABILITY FOR THE PROJECT; AND

43 Q. WHETHER HEALTH INSURANCE IS PROVIDED TO EMPLOYEES.

44 4. PENALTY. THE QUESTIONNAIRE SHALL BE SUBSCRIBED AND AFFIRMED AS TO
45 ITS TRUTH, ACCURACY AND COMPLETENESS UNDER PENALTY OF PERJURY.

46 5. AWARD OF PUBLIC WORK CONTRACT TO LOWEST RESPONSIBLE BIDDER. A.
47 WHERE A PUBLIC WORK CONTRACT IS REQUIRED TO BE AWARDED TO THE LOWEST
48 RESPONSIBLE BIDDER, NO CONTRACT MAY BE AWARDED TO A BIDDER IF ANY OF ITS
49 CONTRACTORS OR SUBCONTRACTORS:

50 (I) HAVE HAD A FINAL DETERMINATION RENDERED FOR A VIOLATION OF ARTICLE
51 EIGHT OF THE LABOR LAW, THE WORKERS' COMPENSATION LAW, THE UNEMPLOYMENT
52 INSURANCE LAW, OR EMPLOYEE MISCLASSIFICATION BY ANY FEDERAL OR STATE
53 AGENCY WITHIN THE PAST TEN YEARS;

54 (II) HAVE COMMITTED A VIOLATION OF ANY OTHER LAWS UNDER PARAGRAPH G,
55 H, I, OR J OF SUBDIVISION THREE OF THIS SECTION WITHIN THE PAST FIVE
56 YEARS;

1 (III) FAIL TO PARTICIPATE IN AN APPRENTICESHIP TRAINING PROGRAM
2 APPROVED AND REGISTERED WITH THE STATE OR FEDERAL DEPARTMENT OF LABOR;
3 OR

4 (IV) FAIL TO PROVIDE PROOF OF SURETY BOND AND WORKERS' COMPENSATION
5 COVERAGE.

6 B. BASED ON THE INFORMATION COLLECTED IN THE QUESTIONNAIRES THE
7 CONTRACTING ENTITY MAY DETERMINE THAT A BIDDER IS NOT RESPONSIBLE AND
8 NOT AWARD A CONTRACT TO THE BIDDER UPON FINDING THAT:

9 (I) THE PROPOSED CONTRACTOR OR SUBCONTRACTORS FOR THE CONTRACT LACK
10 ADEQUATE EXPERTISE, OR LACK THE FINANCIAL RESOURCES TO PERFORM THE
11 CONTRACT OR SUBCONTRACT IN A TIMELY AND COMPETENT MANNER;

12 (II) THE EQUIPMENT TO BE USED FOR THE CONTRACT IS NOT SAFE FOR OPERA-
13 TION BY EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTORS, OR FOR THE
14 PUBLIC;

15 (III) THE BID SUBMITTED IS SO MUCH LOWER THAN THE AGENCY'S ENGINEER'S
16 ESTIMATE THAT IT SEEMS UNLIKELY THAT THE BIDDER WILL BE ABLE TO PERFORM
17 THE CONTRACT SATISFACTORILY AT THE PRICE BID;

18 (IV) THE BID SUBMITTED IS MATHEMATICALLY OR MATERIALLY UNBALANCED;

19 (V) A LACK OF GOOD FAITH EFFORT TO COMPLY WITH STATE AND FEDERAL
20 REQUIREMENTS FOR USE OF MINORITY-OWNED, WOMEN-OWNED AND
21 DISADVANTAGED-OWNED BUSINESSES;

22 (VI) FALSE OR MISLEADING INFORMATION HAS BEEN PRESENTED TO THE
23 CONTRACTING ENTITY IN CONNECTION WITH THE BID; OR

24 (VII) ANY OTHER INFORMATION FROM THE QUESTIONNAIRE WHICH RAISES SERI-
25 OUS QUESTIONS CONCERNING THE PRESENT CAPABILITY AND RESPONSIBILITY OF
26 THE CONTRACTOR OR ANY SUBCONTRACTOR TO PERFORM THE CONTRACT.

27 S 2. The general municipal law is amended by adding a new section
28 100-b to read as follows:

29 S 100-B. LOWEST RESPONSIBLE BIDDER. 1. DEFINITION. FOR THE PURPOSES
30 OF THIS ARTICLE, "LOWEST RESPONSIBLE BIDDER" SHALL MEAN THE PERSON,
31 FIRM, CORPORATION, CONTRACTOR OR SUBCONTRACTOR OR OTHER ENTITY SUBMIT-
32 TING A BID FOR A PUBLIC WORK CONTRACT FOR THE ERECTION, CONSTRUCTION,
33 RECONSTRUCTION OR ALTERATION OF BUILDINGS WHO:

34 A. SUBMITS THE LOWEST BID; AND

35 B. IS NOT DISQUALIFIED ON ANY OF THE GROUNDS LISTED UNDER SUBDIVISION
36 FIVE OF THIS SECTION.

37 2. USE OF QUESTIONNAIRE TO DETERMINE RESPONSIBILITY OF CONTRACTORS AND
38 SUBCONTRACTORS. A. NO PUBLIC WORK CONTRACT MAY BE AWARDED BY ANY POLI-
39 TICAL SUBDIVISION OR BY AN OFFICER, BOARD OR AGENCY THEREOF, TO THE
40 LOWEST RESPONSIBLE BIDDER UNLESS EACH CONTRACTOR AND SUBCONTRACTOR FOR
41 THE CONTRACT SUBMITS, AND THE CONTRACTING ENTITY REVIEWS, A QUESTION-
42 NAIRE DEMONSTRATING ITS RESPONSIBILITY TO PERFORM THE CONTRACT.

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48 QUESTIONNAIRE FOR USE BY A POLITICAL SUBDIVISION OR BY AN OFFICER, BOARD
49 OR AGENCY THEREOF, WHICH SHALL REQUIRE EACH CONTRACTOR AND SUBCONTRACTOR
50 TO PROVIDE THE FOLLOWING INFORMATION:

51 A. THE NAME, ADDRESS AND TELEPHONE NUMBER OF ITS PRINCIPALS, OWNERS,
52 OFFICERS, AND SHAREHOLDERS WHO OWN OR CONTROL AT LEAST FIVE PERCENT OF
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3 CORPORATION, LIMITED PARTNERSHIP, JOINT VENTURE OR SOLE PROPRIETOR;
4 D. THE NAMES AND ADDRESSES OF THE SUBCONTRACTORS PLANNED FOR THE
5 PROJECT;
6 E. THE USE OF REGISTERED AND APPROVED APPRENTICESHIP TRAINING PROGRAMS
7 FOR THE PAST FIVE YEARS;
8 F. ANY VIOLATIONS OF THE PREVAILING WAGE LAW UNDER ARTICLE EIGHT OF
9 THE LABOR LAW OR THE FEDERAL DAVIS-BACON ACT;
10 G. ANY VIOLATIONS OF STATE OR FEDERAL LAWS RELATING TO UNEMPLOYMENT
11 COMPENSATION, WORKERS' COMPENSATION, OCCUPATIONAL HEALTH AND SAFETY,
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30 OWNERS AND OFFICERS;
31 N. EXPERTISE AND EXPERIENCE PERFORMING THE TYPE OF WORK REQUIRED UNDER
32 THE CONTRACT;
33 O. FINANCIAL CAPABILITY AND RELIABILITY INCLUDING FISCAL RESOURCES TO
34 PERFORM THE CONTRACT, AND ANY AUDITS OR BANKRUPTCIES WITHIN THE PAST
35 SEVEN YEARS;
36 P. PROOF OF SURETY BOND AND INSURANCE FOR WORKERS' COMPENSATION AND
37 GENERAL AND PROFESSIONAL LIABILITY FOR THE PROJECT; AND
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46 EIGHT OF THE LABOR LAW, THE WORKERS' COMPENSATION LAW, THE UNEMPLOYMENT
47 INSURANCE LAW, OR EMPLOYEE MISCLASSIFICATION BY ANY FEDERAL OR STATE
48 AGENCY WITHIN THE PAST TEN YEARS;
49 (II) HAVE COMMITTED A VIOLATION OF ANY OTHER LAWS UNDER PARAGRAPH G,
50 H, I, OR J OF SUBDIVISION THREE OF THIS SECTION WITHIN THE PAST FIVE
51 YEARS;
52 (III) FAIL TO PARTICIPATE IN AN APPRENTICESHIP TRAINING PROGRAM
53 APPROVED AND REGISTERED WITH THE STATE OR FEDERAL DEPARTMENT OF LABOR;
54 OR
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20 OUS QUESTIONS CONCERNING THE PRESENT CAPABILITY AND RESPONSIBILITY OF
21 THE CONTRACTOR OR ANY SUBCONTRACTOR TO PERFORM THE CONTRACT.

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