

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

6434--A

Cal. No. 119

I N S E N A T E

January 8, 2010

Introduced by Sens. STACHOWSKI, ONORATO, BRESLIN, DUANE, FOLEY, HASSELL-THOMPSON, HUNTLEY, OPPENHEIMER, PARKER, SAVINO, SCHNEIDERMAN, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 SECTION, "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 SIX OF THIS SECTION.
11 2. USE OF QUESTIONNAIRE TO DETERMINE RESPONSIBILITY OF CONTRACTORS AND
12 SUBCONTRACTORS. A. NO PUBLIC WORK CONTRACT IN AN AMOUNT EXCEEDING ONE
13 HUNDRED THOUSAND DOLLARS MAY BE AWARDED BY AN AGENCY, DEPARTMENT, PUBLIC
14 AUTHORITY OR PUBLIC BENEFIT CORPORATION, OFFICE OR OTHER ENTITY OF THE
15 STATE, TO THE LOWEST RESPONSIBLE BIDDER UNLESS EACH CONTRACTOR AND
16 SUBCONTRACTOR FOR THE CONTRACT SUBMITS, AND THE CONTRACTING ENTITY
17 REVIEWS, A QUESTIONNAIRE DEMONSTRATING ITS RESPONSIBILITY TO PERFORM THE
18 CONTRACT.
19 B. QUESTIONNAIRES MUST BE SUBMITTED ELECTRONICALLY TO THE CONTRACTING
20 ENTITY AND TO THE COMPTROLLER WHO SHALL MAINTAIN THE INFORMATION IN AN
21 ELECTRONIC DATABASE FOR REVIEW BY ANY STATE OR LOCAL CONTRACTING ENTITY
22 THAT AWARDS PUBLIC WORK CONTRACTS.

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

LBD15220-10-0

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

5 A. THE NAME, ADDRESS AND TELEPHONE NUMBER OF ITS PRINCIPALS, OWNERS,
6 OFFICERS, SHAREHOLDERS WHO OWN OR CONTROL AT LEAST FIVE PERCENT OF THE
7 STOCK OF THE CONTRACTOR OR SUBCONTRACTOR, PARENT COMPANY AND SUBSID-
8 IARIES. FOR PURPOSES OF THIS SECTION, THE TERM "AFFILIATES" SHALL
9 INCLUDE EACH OF THE INDIVIDUALS AND ENTITIES LISTED IN THIS PARAGRAPH;

10 B. THE TAXPAYER IDENTIFICATION NUMBER OR EMPLOYER IDENTIFICATION
11 NUMBER, AND THE DUN AND BRADSTREET NUMBER;

12 C. THE TYPE OF BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO CORPO-
13 RATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, LIMITED PARTNERSHIP,
14 JOINT VENTURE OR SOLE PROPRIETOR;

15 D. THE NAMES AND ADDRESSES OF THE SUBCONTRACTORS PLANNED FOR THE
16 PROJECT;

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

19 F. ANY VIOLATIONS OF THE PREVAILING WAGE LAW UNDER ARTICLE EIGHT OF
20 THE LABOR LAW OR THE FEDERAL DAVIS-BACON ACT BY THE CONTRACTOR OR
21 SUBCONTRACTOR AND ITS AFFILIATES;

22 G. ANY VIOLATIONS OF STATE OR FEDERAL LAWS RELATING TO UNEMPLOYMENT
23 COMPENSATION, WORKERS' COMPENSATION, OCCUPATIONAL HEALTH AND SAFETY,
24 EMPLOYEE MISCLASSIFICATION, EMPLOYMENT DISABILITY, EMPLOYMENT DISCRIMI-
25 NATION, OR OTHER LABOR LAWS BY THE CONTRACTOR OR SUBCONTRACTOR AND ITS
26 AFFILIATES;

27 H. ANY VIOLATIONS OF STATE OR FEDERAL ENVIRONMENTAL PROTECTION LAWS BY
28 THE CONTRACTOR OR SUBCONTRACTOR AND ITS AFFILIATES;

29 I. ANY FAILURE TO FILE FEDERAL, STATE OR LOCAL TAX RETURNS, ANY TAX
30 LIABILITIES, JUDGMENTS OR LIENS, AND VIOLATIONS OF AGREEMENTS OR LAWS
31 UNDER WHICH A TAX CREDIT, TAX EXEMPTION, LOAN OR GRANT WAS AWARDED BY
32 ANY FEDERAL, STATE OR LOCAL ENTITY BY THE CONTRACTOR OR SUBCONTRACTOR
33 AND ITS AFFILIATES;

34 J. ANY CRIMINAL CONVICTION, INDICTMENT, GRANT OF IMMUNITY OR CIVIL
35 VIOLATION FOR BUSINESS-RELATED ACTIVITY, INCLUDING BUT NOT LIMITED TO
36 BRIBERY, EXTORTION, FRAUD, RACKETEERING, CONTRACT BIDDING AND RESTRAINT
37 OF TRADE BY THE CONTRACTOR OR SUBCONTRACTOR AND ITS AFFILIATES;

38 K. CONTRACT SANCTION HISTORY INCLUDING FEDERAL OR STATE DEBARMENTS,
39 SUSPENSIONS, FINDINGS OF INELIGIBILITY, OR DISQUALIFICATIONS FOR
40 NON-COMPLIANCE WITH MINORITY-OWNED, WOMEN-OWNED OR DISADVANTAGED-OWNED
41 BUSINESS REQUIREMENTS BY THE CONTRACTOR OR SUBCONTRACTOR AND ITS AFFIL-
42 IATES;

43 L. ANY PENDING INVESTIGATIONS FOR CRIMINAL OR CIVIL VIOLATIONS OF ANY
44 STATE OR FEDERAL LAWS BY THE CONTRACTOR OR SUBCONTRACTOR AND ITS AFFIL-
45 IATES;

46 M. PROFESSIONAL LICENSE SANCTION HISTORY AGAINST THE CONTRACTOR OR
47 SUBCONTRACTOR AND ITS AFFILIATES;

48 N. EXPERTISE AND EXPERIENCE PERFORMING THE TYPE OF WORK REQUIRED UNDER
49 THE CONTRACT;

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

52 P. PROOF OF ANY SURETY BOND REQUIRED BY LAW AND INSURANCE FOR WORKERS'
53 COMPENSATION AND GENERAL AND PROFESSIONAL LIABILITY FOR THE PROJECT; AND

54 Q. WHETHER HEALTH INSURANCE IS PROVIDED TO EMPLOYEES.

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

1 5. CHANGE OF INFORMATION ON QUESTIONNAIRE. ANY CONTRACTOR OR SUBCON-
2 TRACTOR THAT HAS SUBMITTED A QUESTIONNAIRE ELECTRONICALLY UNDER THIS
3 SECTION SHALL BE REQUIRED TO UPDATE ANY CHANGE IN THAT INFORMATION, IN A
4 FORM ESTABLISHED BY THE COMPTROLLER, BEFORE THE CONTRACTOR OR SUBCON-
5 TRACTOR IS CONSIDERED FOR THE AWARD OF ANOTHER CONTRACT.

6 6. AWARD OF PUBLIC WORK CONTRACT TO LOWEST RESPONSIBLE BIDDER. A.
7 WHERE A PUBLIC WORK CONTRACT IS REQUIRED TO BE AWARDED TO THE LOWEST
8 RESPONSIBLE BIDDER, NO CONTRACT MAY BE AWARDED TO A BIDDER IF ANY OF ITS
9 CONTRACTORS OR SUBCONTRACTORS:

10 (I) HAVE HAD A FINAL DETERMINATION RENDERED FOR A FAILURE TO PAY
11 PREVAILING WAGES AND SUPPLEMENTS REQUIRED UNDER ARTICLE EIGHT OF THE
12 LABOR LAW, A FAILURE TO SECURE INSURANCE REQUIRED UNDER ARTICLES TWO AND
13 NINE OF THE WORKERS' COMPENSATION LAW, A FAILURE TO PAY UNEMPLOYMENT TAX
14 REQUIRED UNDER ARTICLE EIGHTEEN OF THE LABOR LAW, OR A VIOLATION OF
15 EMPLOYEE MISCLASSIFICATION, BY ANY FEDERAL OR STATE AGENCY OR COURT
16 WITHIN THE PAST TEN YEARS;

17 (II) HAVE HAD A CRIMINAL CONVICTION FOR BUSINESS-RELATED ACTIVITY,
18 INCLUDING BUT NOT LIMITED TO BRIBERY, EXTORTION, FRAUD, RACKETEERING,
19 CONTRACT BIDDING AND RESTRAINT OF TRADE BY THE CONTRACTOR, SUBCONTRACTORS
20 OR ITS AFFILIATES WITHIN THE PAST TEN YEARS;

21 (III) FAIL TO PARTICIPATE IN AN APPRENTICESHIP TRAINING PROGRAM
22 APPROVED AND REGISTERED WITH THE STATE OR FEDERAL DEPARTMENT OF LABOR;
23 OR

24 (IV) FAIL TO PROVIDE PROOF OF ANY SURETY BOND REQUIRED BY LAW AND
25 WORKERS' COMPENSATION COVERAGE.

26 B. A CONTRACTING ENTITY MAY DETERMINE THAT A BIDDER IS NOT RESPONSIBLE
27 AND NOT AWARD A CONTRACT TO THE BIDDER UPON FINDING THAT:

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

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

34 (III) THE CONTRACTOR, SUBCONTRACTORS OR ITS AFFILIATES HAVE COMMITTED
35 A VIOLATION OF ANY LAWS UNDER PARAGRAPH F, G, H, OR I OF SUBDIVISION
36 THREE OF THIS SECTION WITHIN THE PAST FIVE YEARS;

37 (IV) THE BID SUBMITTED IS SO MUCH LOWER THAN THE AGENCY'S ENGINEER'S
38 ESTIMATE THAT IT SEEMS UNLIKELY THAT THE BIDDER WILL BE ABLE TO PERFORM
39 THE CONTRACT SATISFACTORILY AT THE PRICE BID;

40 (V) THE BID SUBMITTED IS MATHEMATICALLY OR MATERIALLY UNBALANCED;

41 (VI) A LACK OF GOOD FAITH EFFORT TO COMPLY WITH STATE AND FEDERAL
42 REQUIREMENTS FOR USE OF MINORITY-OWNED, WOMEN-OWNED AND
43 DISADVANTAGED-OWNED BUSINESSES;

44 (VII) FALSE OR MISLEADING INFORMATION HAS BEEN PRESENTED TO THE
45 CONTRACTING ENTITY IN CONNECTION WITH THE BID; OR

46 (VIII) ANY OTHER INFORMATION WHICH RAISES SERIOUS QUESTIONS CONCERNING
47 THE PRESENT CAPABILITY AND RESPONSIBILITY OF THE CONTRACTOR OR ANY
48 SUBCONTRACTOR TO PERFORM THE CONTRACT.

49 S 2. The general municipal law is amended by adding a new section
50 100-b to read as follows:

51 S 100-B. LOWEST RESPONSIBLE BIDDER. 1. DEFINITION. FOR THE PURPOSES
52 OF THIS SECTION, "LOWEST RESPONSIBLE BIDDER" SHALL MEAN THE PERSON,
53 FIRM, CORPORATION, CONTRACTOR OR SUBCONTRACTOR OR OTHER ENTITY SUBMIT-
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1 B. IS NOT DISQUALIFIED ON ANY OF THE GROUNDS LISTED UNDER SUBDIVISION
2 SIX OF THIS SECTION.

3 2. USE OF QUESTIONNAIRE TO DETERMINE RESPONSIBILITY OF CONTRACTORS AND
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5 HUNDRED THOUSAND DOLLARS MAY BE AWARDED BY ANY POLITICAL SUBDIVISION OR
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7 UNLESS EACH CONTRACTOR AND SUBCONTRACTOR FOR THE CONTRACT SUBMITS, AND
8 THE CONTRACTING ENTITY REVIEWS, A QUESTIONNAIRE DEMONSTRATING ITS
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13 THAT AWARDS PUBLIC WORK CONTRACTS.

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15 QUESTIONNAIRE FOR USE BY A POLITICAL SUBDIVISION OR BY AN OFFICER, BOARD
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17 TO PROVIDE THE FOLLOWING INFORMATION:

18 A. THE NAME, ADDRESS AND TELEPHONE NUMBER OF ITS PRINCIPALS, OWNERS,
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28 NINE OF THE WORKERS' COMPENSATION LAW, A FAILURE TO PAY UNEMPLOYMENT TAX
29 REQUIRED UNDER ARTICLE EIGHTEEN OF THE LABOR LAW, THE UNEMPLOYMENT
30 INSURANCE LAW, OR A VIOLATION OF EMPLOYEE MISCLASSIFICATION, BY ANY
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34 CONTRACT BIDDING AND RESTRAINT OF TRADE BY THE CONTRACTOR, SUBCONTRAC-
35 TORS OR ITS AFFILIATES WITHIN THE PAST TEN YEARS;

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37 APPROVED AND REGISTERED WITH THE STATE OR FEDERAL DEPARTMENT OF LABOR;
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41 B. A CONTRACTING ENTITY MAY DETERMINE THAT A BIDDER IS NOT RESPONSIBLE
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51 THREE OF THIS SECTION WITHIN THE PAST FIVE YEARS;

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53 THAT IT SEEMS UNLIKELY THAT THE BIDDER WILL BE ABLE TO PERFORM THE
54 CONTRACT SATISFACTORILY AT THE PRICE BID;

55 (V) THE BID SUBMITTED IS MATHEMATICALLY OR MATERIALLY UNBALANCED;

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2 REQUIREMENTS FOR USE OF MINORITY-OWNED, WOMEN-OWNED AND
3 DISADVANTAGED-OWNED BUSINESSES;
4 (VII) FALSE OR MISLEADING INFORMATION HAS BEEN PRESENTED TO THE
5 CONTRACTING ENTITY IN CONNECTION WITH THE BID; OR
6 (VIII) ANY OTHER INFORMATION WHICH RAISES SERIOUS QUESTIONS CONCERNING
7 THE PRESENT CAPABILITY AND RESPONSIBILITY OF THE CONTRACTOR OR ANY
8 SUBCONTRACTOR TO PERFORM THE CONTRACT.
9 S 3. This act shall take effect on the ninetieth day after it shall
10 have become a law.