

8077

I N S E N A T E

June 4, 2010

Introduced by Sens. ONORATO, ADAMS, DUANE -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, the general municipal law, the state finance law and the education law, in relation to advertisements for bids

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

1 Section 1. Paragraph (c) of subdivision 3 of section 220 of the labor
2 law, as separately amended by chapter 678 of the laws of 2007 and chap-
3 ter 7 of the laws of 2008, is amended to read as follows:

4 (c) It shall be the duty of the fiscal officer, as defined in this
5 section, to ascertain and determine the schedules of supplements to be
6 provided and wages to be paid workers, laborers and mechanics on such
7 public work, prior to the time of the advertisement for bids, and such
8 schedules shall be annexed to and form a part of the specifications for
9 the work. Such fiscal officer shall file with the department having
10 jurisdiction such schedules prior to the time of the commencement of the
11 advertisement for bids on all public works proposed to be constructed.
12 IF THE FISCAL OFFICER CANNOT ASCERTAIN OR DETERMINE SUCH SCHEDULES OR
13 WAGES, OR DISTINGUISH BETWEEN THE CLASSIFICATIONS OF WORKERS ON SUCH
14 PUBLIC WORK, IT SHALL BE THE DUTY OF THE FISCAL OFFICER TO REJECT ANY
15 CONTRACT ASSOCIATED WITH THE ADVERTISEMENT FOR BIDS. The term "contract"
16 as used in this article also shall include reconstruction and repair of
17 any such public work, and any public work performed under a lease,
18 permit or other agreement pursuant to which the department of jurisdic-
19 tion grants the responsibility of contracting for such public work to
20 any third party proposing to perform such work to which the provisions
21 of this article would apply had the department of jurisdiction
22 contracted directly for its performance, or where there is no lease,
23 permit or other agreement and ownership of a public work is intended to
24 be assumed by such public entity at any time subsequent to completion of
25 the public work.

26 S 2. Paragraph (c) of subdivision 3 of section 220 of the labor law,
27 as amended by chapter 7 of the laws of 2008, is amended to read as
28 follows:

29 (c) It shall be the duty of the fiscal officer, as defined in this
30 section, to ascertain and determine the schedules of supplements to be

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

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1 provided and wages to be paid workmen, laborers and mechanics on such
2 public work, prior to the time of the advertisement for bids, and such
3 schedules shall be annexed to and form a part of the specifications for
4 the work. Such fiscal officer shall file with the department having
5 jurisdiction such schedules to the time of the commencement of the
6 advertisement for bids on all public works proposed to be constructed.
7 IF THE FISCAL OFFICER CANNOT ASCERTAIN OR DETERMINE SUCH SCHEDULES OR
8 WAGES, OR DISTINGUISH BETWEEN THE CLASSIFICATIONS OF WORKERS ON SUCH
9 PUBLIC WORK, IT SHALL BE THE DUTY OF THE FISCAL OFFICER TO REJECT ANY
10 CONTRACT ASSOCIATED WITH THE ADVERTISEMENT FOR BIDS. The term "contract"
11 as used in this subdivision also shall include reconstruction and repair
12 of any such public work.

13 S 3. Subdivision 1 of section 103 of the general municipal law, as
14 amended by section 1 of part D of chapter 494 of the laws of 2009, is
15 amended to read as follows:

16 1. Except as otherwise expressly provided by an act of the legislature
17 or by a local law adopted prior to September first, nineteen hundred
18 fifty-three, all contracts for public work involving an expenditure of
19 more than thirty-five thousand dollars and all purchase contracts
20 involving an expenditure of more than ten thousand dollars, shall be
21 awarded by the appropriate officer, board or agency of a political
22 subdivision or of any district therein including but not limited to a
23 soil conservation district, to the lowest responsible bidder furnishing
24 the required security after advertisement for sealed bids in the manner
25 provided by this section. ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK
26 CONTRACTS MUST BE FOR A FIXED-DOLLAR AMOUNT. In any case where a respon-
27 sible bidder's gross price is reducible by an allowance for the value of
28 used machinery, equipment, apparatus or tools to be traded in by a poli-
29 tical subdivision, the gross price shall be reduced by the amount of
30 such allowance, for the purpose of determining the low bid. In cases
31 where two or more responsible bidders furnishing the required security
32 submit identical bids as to price, such officer, board or agency may
33 award the contract to any of such bidders. Such officer, board or agency
34 may, in his or its discretion, reject all bids and readvertise for new
35 bids in the manner provided by this section. For purposes of this
36 section, "sealed bids", as that term applies to purchase contracts,
37 shall include bids submitted in an electronic format, provided that the
38 governing board of the political subdivision or district, by resolution,
39 has authorized the receipt of bids in such format. Submission in elec-
40 tronic format may not, however, be required as the sole method for the
41 submission of bids. Bids submitted in an electronic format shall be
42 transmitted by bidders to the receiving device designated by the poli-
43 tical subdivision or district. Any method used to receive electronic
44 bids shall comply with article three of the state technology law, and
45 any rules and regulations promulgated and guidelines developed there-
46 under and, at a minimum, must (a) document the time and date of receipt
47 of each bid received electronically; (b) authenticate the identity of
48 the sender; (c) ensure the security of the information transmitted; and
49 (d) ensure the confidentiality of the bid until the time and date estab-
50 lished for the opening of bids. The timely submission of an electronic
51 bid in compliance with instructions provided for such submission in the
52 advertisement for bids and/or the specifications shall be the responsi-
53 bility solely of each bidder or prospective bidder. No political subdi-
54 vision or district therein shall incur any liability from delays of or
55 interruptions in the receiving device designated for the submission and
56 receipt of electronic bids.

1 S 4. Subdivision 1 of section 103 of the general municipal law, as
2 amended by chapter 413 of the laws of 1991, is amended to read as
3 follows:

4 1. Except as otherwise expressly provided by an act of the legislature
5 or by a local law adopted prior to September first, nineteen hundred
6 fifty-three, all contracts for public work involving an expenditure of
7 more than twenty thousand dollars and all purchase contracts involving
8 an expenditure of more than ten thousand dollars, shall be awarded by
9 the appropriate officer, board or agency of a political subdivision or
10 of any district therein including but not limited to a soil conservation
11 district, to the lowest responsible bidder furnishing the required secu-
12 rity after advertisement for sealed bids in the manner provided by this
13 section. ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK CONTRACTS MUST BE FOR A
14 FIXED-DOLLAR AMOUNT. In any case where a responsible bidder's gross
15 price is reducible by an allowance for the value of used machinery,
16 equipment, apparatus or tools to be traded in by a political subdivi-
17 sion, the gross price shall be reduced by the amount of such allowance,
18 for the purpose of determining the low bid. In cases where two or more
19 responsible bidders furnishing the required security submit identical
20 bids as to price, such officer, board or agency may award the contract
21 to any of such bidders. Such officer, board or agency may, in his or its
22 discretion, reject all bids and readvertise for new bids in the manner
23 provided by this section.

24 S 5. Subdivision 2 of section 103 of the general municipal law, as
25 amended by section 5 of part X of chapter 62 of the laws of 2003, is
26 amended to read as follows:

27 2. Advertisement for bids shall be published in the official newspaper
28 or newspapers, if any, or otherwise in a newspaper or newspapers desig-
29 nated for such purpose. Such advertisement shall contain a statement of
30 the time when and place where all bids received pursuant to such notice
31 will be publicly opened and read, and the designation of the receiving
32 device if the political subdivision or district has authorized the
33 receipt of bids in an electronic format. SUCH ADVERTISEMENT SHALL
34 DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK
35 TO BE PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF
36 SUBDIVISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. Such
37 board or agency may by resolution designate any officer or employee to
38 open the bids at the time and place specified in the notice. Such desig-
39 nee shall make a record of such bids in such form and detail as the
40 board or agency shall prescribe and present the same at the next regular
41 or special meeting of such board or agency. All bids received shall be
42 publicly opened and read at the time and place so specified. At least
43 five days shall elapse between the first publication of such advertise-
44 ment and the date so specified for the opening and reading of bids.

45 S 6. Subdivision 2 of section 103 of the general municipal law, as
46 amended by chapter 296 of the laws of 1958, is amended to read as
47 follows:

48 2. Advertisement for bids shall be published in the official newspaper
49 or newspapers, if any, or otherwise in a newspaper or newspapers desig-
50 nated for such purpose. Such advertisement shall contain a statement of
51 the time when and place where all bids received pursuant to such notice
52 will be publicly opened and read. SUCH ADVERTISEMENT SHALL DESCRIBE
53 SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE
54 PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDI-
55 VISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. Such board
56 or agency may by resolution designate any officer or employee to open

1 the bids at the time and place specified in the notice. Such designee
2 shall make a record of such bids in such form and detail as the board or
3 agency shall prescribe and present the same at the next regular or
4 special meeting of such board or agency. All bids received shall be
5 publicly opened and read at the time and place so specified. At least
6 five days shall elapse between the first publication of such advertise-
7 ment and the date so specified for the opening and reading of bids.

8 S 7. The second undesignated paragraph of section 135 of the state
9 finance law, as amended by section 3 of part MM of chapter 57 of the
10 laws of 2008, is amended to read as follows:

11 Such specifications must be so drawn as to permit separate and inde-
12 pendent bidding upon each of the above three subdivisions of work. All
13 contracts hereafter awarded by the state or a department, board, commis-
14 sioner or officer thereof, for the erection, construction or alteration
15 of buildings, or any part thereof, shall award the three subdivisions of
16 the above specified work separately to responsible and reliable persons,
17 firms or corporations engaged in these classes of work. A contract for
18 one or more buildings in any project shall be awarded to the lowest
19 responsible bidder for all the buildings included in the specifications.

20 ALL SUCH SPECIFICATIONS ISSUED PURSUANT TO THIS ARTICLE SHALL DESCRIBE
21 SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE
22 PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDI-
23 VISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. EACH BIDDER
24 FOR ANY PROJECT UNDER THIS ARTICLE SHALL SUBMIT BIDS FOR A FIXED-DOLLAR
25 AMOUNT.

26 S 8. Paragraphs a and d of subdivision 6 of section 2590-p of the
27 education law, paragraph a as added by chapter 738 of the laws of 1988
28 and paragraph d as amended by chapter 91 of the laws of 2002, are
29 amended to read as follows:

30 a. For each project included in an approved five-year educational
31 facilities capital plan, the chancellor shall develop a detailed scope
32 of the project, which shall include the following: (i) the purposes and
33 public to be served, (ii) the programs to be conducted in the facility,
34 (iii) the gross amounts of space and bulk for any building or structure,
35 (iv) identification of the intent to use architectural, engineering or
36 other consultant services and estimated fees for such consultant
37 services (v) the schedule of design and construction, (vi) the total
38 estimated project costs, including costs for site acquisition, prepara-
39 tion and tenant relocation, design, construction and equipment, (vii)
40 maximum estimated expenditures for the project for each fiscal year
41 until its completion, (viii) costs associated with maintenance and oper-
42 ation of the physical plant and (ix) such other information as the chan-
43 cellor shall specify. In the event, a project consists of a program
44 element without identification of the particular education facility at
45 which such project is to be performed, the detailed scope of the project
46 shall specify the nature of the work to be performed, applicable price
47 and quality standards, a list of the schools eligible for such work,
48 annual performance targets and the total estimated costs of such project
49 during each fiscal year until its completion. ALL SUCH ESTIMATED COSTS
50 AND PRICES SHALL BE FOR A FIXED-DOLLAR AMOUNT.

51 d. For projects to be funded pursuant to subdivision four of this
52 section, the chancellor shall transmit the detailed scope of each such
53 project to the director of management and budget of the city for
54 approval.

55 (i) Except as provided in paragraph b of this subdivision, no expenses
56 shall be incurred by the city board or the authority for any such

1 project prior to approval of the detailed scope of any such project.
2 SUCH DETAILED SCOPE OF THE PROJECT SHALL DESCRIBE SPECIFICALLY THE
3 NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE PERFORMED.

4 (ii) No detailed scope of project shall be approved unless the total
5 estimated costs of such project, together with the aggregate estimated
6 costs of all projects for which a detailed scope has theretofore been
7 approved, are within city capital budget appropriations available there-
8 for. A detailed scope of project that is not disapproved by the director
9 of management and budget within thirty days of its submission shall be
10 deemed approved. To the extent the director disapproves all or part of a
11 scope, he or she shall set forth in writing the reasons therefor.

12 (iii) Upon approval of the detailed scope of project, the chancellor
13 shall refer such project to the New York city school construction
14 authority for implementation in accordance with an agreement between the
15 authority and the city board and shall transmit the approved project
16 scope to the comptroller, whereupon the total estimated costs of such
17 project as set forth in such approved project scope shall be available
18 for expenditure. ALL SUCH ESTIMATED COSTS SHALL BE FOR A FIXED-DOLLAR
19 AMOUNT.

20 (iv) Approval of the director of management and budget shall be
21 required for any material change in the approved detailed scope of
22 project or for any increase in the total cost of such project in excess
23 of any reserve provided in the approved detailed scope of project. Such
24 approval shall be given or deemed given in the manner provided herein.

25 (v) The provisions of this paragraph shall not apply to emergency
26 projects undertaken pursuant to paragraph h of subdivision two of this
27 section, the estimated costs of which, together with the costs of other
28 projects undertaken pursuant to said paragraph h, does not exceed the
29 amount set forth in the educational facilities capital plan for activ-
30 ities pursuant to paragraph h of subdivision two of this section.

31 S 9. This act shall take effect on the ninetieth day after it shall
32 have become a law, provided however, that the amendments to paragraph
33 (c) of subdivision 3 of section 220 of the labor law made by section one
34 of this act shall be subject to the expiration and reversion of such
35 paragraph pursuant to chapter 678 of the laws of 2007, as amended, when
36 upon such date the provisions of section two of this act shall take
37 effect, provided further that the amendments to subdivision 1 of section
38 103 of the general municipal law made by section three of this act shall
39 be subject to the expiration and reversion of such subdivision pursuant
40 to subdivision (a) of section 41 of part X of chapter 62 of the laws of
41 2003, as amended, when upon such date the provisions of section four of
42 this act shall take effect, provided further, that the amendments to
43 subdivision 2 of section 103 of the general municipal law made by
44 section five of this act shall be subject to the expiration and rever-
45 sion of such subdivision pursuant to subdivision (a) of section 41 of
46 part X of chapter 62 of the laws of 2003, as amended, when upon such
47 date the provisions of section six of this act shall take effect;
48 provided, further, that the amendments to paragraph d of subdivision 6
49 of section 2590-p of the education law made by section eight of this act
50 shall not affect the repeal of such paragraph and shall be deemed
51 repealed therewith.