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

1047

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law and the general municipal law, in relation to determining contractor responsibility on public construction projects

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

Section 1. The state finance law is amended by adding a new section 139-l to read as follows:

S 139-L. CONTRACTOR AND SUBCONTRACTOR RESPONSIBILITY. 1. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS OTHERWISE SPECIFIED:

A. "APPARENT LOW BIDDER" SHALL MEAN A BIDDER WHO, UPON THE OPENING OF BIDS FOR A CONTRACT, IS DETERMINED TO HAVE SUBMITTED THE LOWEST BID FOR SUCH CONTRACT.

B. "BIDDER" SHALL MEAN ANY PERSON, PARTNERSHIP, FIRM, CORPORATION OR OTHER ENTITY SUBMITTING A COMPETITIVE BID FOR, OR SUBMITTED FOR APPROVAL AS A SUBCONTRACTOR ON, A CONTRACT BY ANY CONTRACTING ENTITY.

C. "CONTRACT" SHALL MEAN ANY CONTRACT MADE AND AWARDED FOR CONSTRUCTION, RECONSTRUCTION OR ALTERATION OF ANY PUBLIC WORK PROJECT WHICH IS REQUIRED BY LAW TO BE LET BY COMPETITIVE BIDDING TO THE LOWEST RESPONSIBLE BIDDER BY A CONTRACTING ENTITY.

D. "CONTRACTING ENTITY" SHALL MEAN ANY PUBLIC DEPARTMENT, PUBLIC BENEFIT CORPORATION OR PUBLIC CORPORATION COVERED BY SECTION ONE HUNDRED THIRTY-NINE-F OF THIS ARTICLE OR SECTION THIRTY-EIGHT OF THE HIGHWAY LAW.

E. "CONTRACTOR" SHALL MEAN A BIDDER WHO HAS BEEN AWARDED A CONTRACT.

F. "SUBCONTRACTOR" SHALL MEAN A PERSON, PARTNERSHIP, FIRM, CORPORATION OR OTHER ENTITY THAT IS PROPOSED TO PERFORM WORK ON THE CONTRACT.

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

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2. IN DELIBERATING UPON THE RESPONSIBILITY OF A BIDDER OR PROPOSED SUBCONTRACTOR ON A CONTRACT, THE CONTRACTING ENTITY SHALL GIVE DUE CONSIDERATION TO ANY CREDIBLE EVIDENCE OR INFORMATION REASONABLY DEEMED TO BE RELIABLE THAT THE PAST OR CURRENT RECORD OF A BIDDER OR PROPOSED SUBCONTRACTOR SHALL WARRANT A DETERMINATION THAT SUCH BIDDER OR SUBCONTRACTOR IS NOT A RESPONSIBLE BIDDER. THE CONTRACTING ENTITY, IN DETERMINING THE RESPONSIBILITY OF THE APPARENT LOW BIDDER SHALL REQUIRE, AND THE APPARENT LOW BIDDER SHALL PROVIDE, THE FOLLOWING INFORMATION RELATING TO THE APPARENT LOW BIDDER IN ORDER FOR THE CONTRACTING ENTITY TO DETERMINE THE PECUNIARY AND FINANCIAL RESPONSIBILITY, ACCOUNTABILITY, OPERATIONAL RESPONSIBILITY, RELIABILITY, SKILL, CAPACITY, ABILITY, JUDGMENT AND INTEGRITY OF THE APPARENT LOW BIDDER:

A. A DESCRIPTION OF ITS EXPERIENCE WITH PROJECTS OF COMPARATIVE SCOPE, COMPLEXITY, AND COST WITHIN THE PAST FIVE YEARS, TOGETHER WITH DOCUMENTARY EVIDENCE OF SUCH PROJECTS;

B. DOCUMENTATION REGARDING SUCH PROJECTS DESCRIBING THE FOLLOWING: TIMELINESS OF PERFORMANCE; QUALITY OF WORK; EXTENSION REQUESTS; LITIGATION AND/OR ARBITRATION ARISING FROM SUCH WORK, INCLUDING FINES AND PENALTIES IMPOSED AND PAYMENT THEREOF; LIENS FILED; HISTORY OF CLAIMS FOR EXTRA WORK; CONTRACT DEFAULTS; AND AN EXPLANATION OF THE SAME;

C. IDENTIFICATION AND DESCRIPTION OF ANY PROJECTS WITHIN THE PREVIOUS FIVE YEARS THAT THE APPARENT LOW BIDDER WAS DETERMINED BY THE CONTRACTING ENTITY NOT TO BE A RESPONSIBLE BIDDER, AND THE REASONS GIVEN BY SUCH ENTITY THEREFORE, TOGETHER WITH AN EXPLANATION THEREOF;

D. AN ADEQUATE DEMONSTRATION OF FINANCIAL RESPONSIBILITY, WHICH MAY INCLUDE A CERTIFIED FINANCIAL STATEMENT PREPARED BY A CERTIFIED PUBLIC ACCOUNTANT, TO ASSURE THAT THE APPARENT LOW BIDDER POSSESSES ADEQUATE RESOURCES AND AVAILABILITY OF CREDIT AND THE MEANS AND ABILITY TO PROCURE INSURANCE AND BONDS REQUIRED FOR THE PROJECT;

E. DISCLOSURE OF ANY SUSPENSIONS OR REVOCATIONS OF ANY PROFESSIONAL LICENSE OF ANY DIRECTOR, OFFICER, OWNER OR MANAGERIAL EMPLOYEE OF THE APPARENT LOW BIDDER, TO THE EXTENT THAT ANY WORK TO BE PERFORMED IS WITHIN THE FIELD OF SUCH LICENSED PROFESSION;

F. DISCLOSURE OF ANY AND ALL UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION VIOLATIONS WITHIN THE PREVIOUS FIVE YEARS, AS WELL AS ALL NOTICES OF SUCH VIOLATIONS AGAINST THE APPARENT LOW BIDDER IN THE SAME FIVE YEAR PERIOD, TOGETHER WITH A DESCRIPTION AND EXPLANATION OF REMEDIATION OR OTHER STEPS TAKEN REGARDING SUCH VIOLATIONS AND NOTICES OF VIOLATIONS;

G. DISCLOSURE OF ANY AND ALL VIOLATIONS OF ARTICLE EIGHT OF THE LABOR LAW AND ANY OTHER PROVISION OF SUCH LAW, INCLUDING BUT NOT LIMITED TO, CHILD LABOR VIOLATIONS, FAILURE TO PAY WAGES AND UNEMPLOYMENT INSURANCE TAX DELINQUENCIES WITHIN THE PAST FIVE YEARS;

H. DISCLOSURE OF VIOLATIONS OF THE WORKERS' COMPENSATION LAW, INCLUDING, BUT NOT LIMITED TO THE FAILURE TO PROVIDE PROOF OF WORKERS' COMPENSATION OR DISABILITY COVERAGE AND/OR ANY LAPSES THEREOF;

I. DISCLOSURE OF ANY FELONY CONVICTIONS, INVOLVING THE LOWEST RESPONSIBLE BIDDER, ITS OFFICERS, DIRECTORS, OWNERS OR MANAGERIAL EMPLOYEES WITHIN THE PAST FIVE YEARS; AND

J. DISCLOSURE OF ANY VIOLATIONS WITHIN THE PAST FIVE YEARS OR PENDING CHARGES CONCERNING FEDERAL, STATE OR MUNICIPAL ENVIRONMENTAL AND/OR HEALTH LAWS, CODES, RULES AND/OR REGULATIONS.

3. WHEN REQUESTED BY THE CONTRACTING ENTITY AFTER THE BID HAS BEEN SUBMITTED BUT BEFORE ANY OF THE SUBCONTRACTED WORK COMMENCES, THE CONTRACTOR SHALL IDENTIFY ALL WORK TO BE SUBCONTRACTED ALONG WITH THE NAME OF THE FIRM OR FIRMS TO WHICH THE WORK WILL BE SUBCONTRACTED. THE

APPROVAL OF THE SUBCONTRACTOR BY THE CONTRACTING ENTITY, AS PROVIDED BY THE CONTRACT, SHALL BE SUBJECT TO THE SAME EVALUATION OF RESPONSIBILITY CONTAINED WITHIN THIS SECTION FOR THE CONTRACTOR.

4. PRIOR TO A FINAL DETERMINATION THAT THE APPARENT LOW BIDDER IS NOT RESPONSIBLE, THE CONTRACTING ENTITY SHALL NOTIFY THE PARTY OF SUCH DETERMINATION, IN WRITING, STATING THE REASONS FOR SUCH DETERMINATION, AND SETTING FORTH A TIME, DATE AND PLACE FOR THE APPARENT LOW BIDDER TO APPEAR AND BE HEARD, PRIOR TO SUCH DETERMINATION BEING MADE REGARDING ITS RESPONSIBILITY. IN THE EVENT OF A FINAL DETERMINATION THAT THE APPARENT LOW BIDDER IS NOT RESPONSIBLE, THE NEXT LOWEST BIDDER SHALL BECOME THE APPARENT LOW BIDDER AND SHALL BE SUBJECT TO THE REQUIREMENTS SET FORTH IN THIS SECTION.

S 2. The general municipal law is amended by adding a new section 103-g to read as follows:

S 103-G. CONTRACTOR AND SUBCONTRACTOR RESPONSIBILITY. 1. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS OTHERWISE SPECIFIED:

A. "APPARENT LOW BIDDER" SHALL MEAN A BIDDER WHO, UPON THE OPENING OF BIDS FOR A CONTRACT, IS DETERMINED TO HAVE SUBMITTED THE LOWEST BID FOR SUCH CONTRACT.

B. "BIDDER" SHALL MEAN ANY PERSON, PARTNERSHIP, FIRM, CORPORATION OR OTHER ENTITY SUBMITTING A COMPETITIVE BID FOR, OR SUBMITTED FOR APPROVAL AS A SUBCONTRACTOR ON, A CONTRACTOR BY ANY CONTRACTING ENTITY.

C. "CONTRACT" SHALL MEAN ANY CONTRACT WHICH IS REQUIRED BY LAW TO BE LET BY COMPETITIVE BID BY A CONTRACTING ENTITY FOR CONSTRUCTION, RECONSTRUCTION OR ALTERATION OF ANY PUBLIC WORK PROJECT TO THE LOWEST RESPONSIBLE BIDDER.

D. "CONTRACTING ENTITY" SHALL MEAN A POLITICAL SUBDIVISION OR ANY DISTRICT THEREIN.

2. IN DELIBERATING UPON THE RESPONSIBILITY OF A BIDDER OR PROPOSED SUBCONTRACTOR ON A CONTRACT, THE CONTRACTING ENTITY SHALL GIVE DUE CONSIDERATION TO ANY CREDIBLE EVIDENCE OR INFORMATION REASONABLY DEEMED TO BE RELIABLE THAT THE PAST OR CURRENT RECORD OF A BIDDER OR PROPOSED SUBCONTRACTOR SHALL WARRANT A DETERMINATION THAT SUCH BIDDER OR SUBCONTRACTOR IS NOT A RESPONSIBLE BIDDER. THE CONTRACTING ENTITY, IN DETERMINING THE RESPONSIBILITY OF THE APPARENT LOW BIDDER SHALL REQUIRE, AND THE APPARENT LOW BIDDER SHALL PROVIDE, THE FOLLOWING INFORMATION RELATING TO THE APPARENT LOW BIDDER IN ORDER FOR THE CONTRACTING ENTITY TO DETERMINE THE PECUNIARY AND FINANCIAL RESPONSIBILITY, ACCOUNTABILITY, OPERATIONAL RESPONSIBILITY, RELIABILITY, SKILL, CAPACITY, ABILITY, JUDGMENT AND INTEGRITY OF THE APPARENT LOW BIDDER:

A. A DESCRIPTION OF ITS EXPERIENCE WITH PROJECTS OF COMPARATIVE SCOPE, COMPLEXITY, AND COST WITHIN THE PAST FIVE YEARS, TOGETHER WITH DOCUMENTARY EVIDENCE OF SUCH PROJECTS;

B. DOCUMENTATION REGARDING SUCH PROJECTS DESCRIBING THE FOLLOWING: TIMELINESS OF PERFORMANCE; QUALITY OF WORK; EXTENSION REQUESTS; LITIGATION AND/OR ARBITRATION ARISING FROM SUCH WORK, INCLUDING FINES AND PENALTIES IMPOSED AND PAYMENT THEREOF; LIENS FILED; HISTORY OF CLAIMS FOR EXTRA WORK; CONTRACT DEFAULTS; AND AN EXPLANATION OF THE SAME;

C. IDENTIFICATION AND DESCRIPTION OF ANY PROJECTS WITHIN THE PREVIOUS FIVE YEARS THAT THE APPARENT LOW BIDDER WAS DETERMINED BY THE CONTRACTING ENTITY NOT TO BE A RESPONSIBLE BIDDER, AND THE REASONS GIVEN BY SUCH ENTITY THEREFORE, TOGETHER WITH AN EXPLANATION THEREOF;

D. AN ADEQUATE DEMONSTRATION OF FINANCIAL RESPONSIBILITY, WHICH MAY INCLUDE A CERTIFIED FINANCIAL STATEMENT PREPARED BY A CERTIFIED PUBLIC ACCOUNTANT, TO ASSURE THAT THE APPARENT LOW BIDDER POSSESSES ADEQUATE

RESOURCES AND AVAILABILITY OF CREDIT AND THE MEANS AND ABILITY TO PROCURE INSURANCE AND BONDS REQUIRED FOR THE PROJECT;

E. DISCLOSURE OF ANY SUSPENSIONS OR REVOCATIONS OF ANY PROFESSIONAL LICENSE OF ANY DIRECTOR, OFFICER, OWNER OR MANAGERIAL EMPLOYEE OF THE APPARENT LOW BIDDER, TO THE EXTENT THAT ANY WORK TO BE PERFORMED IS WITHIN THE FIELD OF SUCH LICENSED PROFESSION;

F. DISCLOSURE OF ANY AND ALL UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION VIOLATIONS WITHIN THE PREVIOUS FIVE YEARS, AS WELL AS ALL NOTICES OF SUCH VIOLATIONS FILED AGAINST THE APPARENT LOW BIDDER IN THE SAME FIVE YEAR PERIOD, TOGETHER WITH A DESCRIPTION AND EXPLANATION OF REMEDIATION OR OTHER STEPS TAKEN REGARDING SUCH VIOLATIONS AND NOTICES OF VIOLATIONS;

G. DISCLOSURE OF ANY AND ALL VIOLATIONS OF ARTICLE EIGHT OF THE LABOR LAW AND ANY OTHER PROVISION OF SUCH LAW, INCLUDING BUT NOT LIMITED TO, CHILD LABOR VIOLATIONS, FAILURE TO PAY WAGES AND UNEMPLOYMENT INSURANCE TAX DELINQUENCIES WITHIN THE PAST FIVE YEARS;

H. DISCLOSURE OF VIOLATIONS OF THE WORKERS' COMPENSATION LAW, INCLUDING BUT NOT LIMITED TO, THE FAILURE TO PROVIDE PROOF OF WORKERS' COMPENSATION OR DISABILITY COVERAGE AND/OR ANY LAPSES THEREOF;

I. DISCLOSURE OF ANY FELONY CONVICTIONS OF THE LOWEST RESPONSIBLE BIDDER, ITS OFFICERS, DIRECTORS, OWNERS OR MANAGERIAL EMPLOYEES WITHIN THE PAST FIVE YEARS; AND

J. DISCLOSURE OF ANY VIOLATIONS WITHIN THE PAST FIVE YEARS OR PENDING CHARGES CONCERNING FEDERAL, STATE OR MUNICIPAL ENVIRONMENTAL AND/OR HEALTH LAWS, CODES, RULES AND/OR REGULATIONS.

3. WHEN REQUESTED BY THE CONTRACTING ENTITY AFTER THE BID HAS BEEN SUBMITTED BUT BEFORE ANY OF THE SUBCONTRACTED WORK COMMENCES, THE CONTRACTOR SHALL IDENTIFY ALL WORK TO BE SUBCONTRACTED ALONG WITH THE NAME OF THE FIRM OR FIRMS TO WHICH THE WORK WILL BE SUBCONTRACTED. THE APPROVAL OF THE SUBCONTRACTOR BY THE CONTRACTING ENTITY, AS PROVIDED BY THE CONTRACT, SHALL BE SUBJECT TO THE SAME EVALUATION OF RESPONSIBILITY CONTAINED WITHIN THIS SECTION FOR THE CONTRACTOR.

4. PRIOR TO A FINAL DETERMINATION THAT THE APPARENT LOW BIDDER IS NOT RESPONSIBLE, THE CONTRACTING ENTITY SHALL NOTIFY THE PARTY OF SUCH DETERMINATION, IN WRITING, STATING THE REASONS FOR SUCH DETERMINATION, AND SETTING FORTH A TIME, DATE AND PLACE FOR THE APPARENT LOW BIDDER TO APPEAR AND BE HEARD, PRIOR TO SUCH DETERMINATION BEING MADE REGARDING ITS RESPONSIBILITY. IN THE EVENT OF A FINAL DETERMINATION THAT THE APPARENT LOW BIDDER IS NOT RESPONSIBLE, THE NEXT LOWEST BIDDER SHALL BECOME THE APPARENT LOW BIDDER AND SHALL BE SUBJECT TO THE REQUIREMENTS SET FORTH IN THIS SECTION.

S 3. This act shall take effect on the thirtieth day after it shall have become a law and shall be applicable to all contracts advertised for bid on or after such date.