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

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I N A S S E M B L Y

January 26, 2010

Introduced by M. of A. SCHROEDER -- read once and referred to the Committee on Local Governments

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:

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

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

A. SUBMITS THE LOWEST BID; AND

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

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

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

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

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

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

B. THE TAXPAYER IDENTIFICATION NUMBER OR EMPLOYER IDENTIFICATION NUMBER, AND THE DUN AND BRADSTREET NUMBER OF THE CONTRACTOR OR SUBCONTRACTOR;

C. THE CONTRACTOR OR SUBCONTRACTOR'S TYPE OF BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO CORPORATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, LIMITED PARTNERSHIP, JOINT VENTURE OR SOLE PROPRIETOR;

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

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

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

G. ANY VIOLATIONS OF STATE OR FEDERAL LAWS RELATING TO UNEMPLOYMENT COMPENSATION, WORKERS' COMPENSATION, OCCUPATIONAL HEALTH AND SAFETY, EMPLOYEE MISCLASSIFICATION, EMPLOYMENT DISABILITY, EMPLOYMENT DISCRIMINATION, OR OTHER LABOR LAWS;

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

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

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

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

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

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

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

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

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

Q. WHETHER HEALTH INSURANCE IS PROVIDED TO EMPLOYEES.

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

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

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

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

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

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

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

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

(II) THE EQUIPMENT TO BE USED FOR THE CONTRACT IS NOT SAFE FOR OPERATION BY EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTORS, OR FOR THE PUBLIC;

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

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

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

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

(VII) ANY OTHER INFORMATION FROM THE QUESTIONNAIRE WHICH RAISES SERIOUS QUESTIONS CONCERNING THE PRESENT CAPABILITY AND RESPONSIBILITY OF THE CONTRACTOR OR ANY SUBCONTRACTOR TO PERFORM THE CONTRACT.

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

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

A. SUBMITS THE LOWEST BID; AND

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

2. USE OF QUESTIONNAIRE TO DETERMINE RESPONSIBILITY OF CONTRACTORS AND SUBCONTRACTORS. A. NO PUBLIC WORK CONTRACT MAY BE AWARDED BY ANY POLITICAL SUBDIVISION OR BY AN OFFICER, BOARD OR AGENCY THEREOF, TO THE LOWEST RESPONSIBLE BIDDER UNLESS EACH CONTRACTOR AND SUBCONTRACTOR FOR THE CONTRACT SUBMITS, AND THE CONTRACTING ENTITY REVIEWS, A QUESTIONNAIRE DEMONSTRATING ITS RESPONSIBILITY TO PERFORM THE CONTRACT.

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

3. CONTENTS OF QUESTIONNAIRE. THE COMPTROLLER SHALL PREPARE A UNIFORM QUESTIONNAIRE FOR USE BY A POLITICAL SUBDIVISION OR BY AN OFFICER, BOARD OR AGENCY THEREOF, WHICH SHALL REQUIRE EACH CONTRACTOR AND SUBCONTRACTOR TO PROVIDE THE FOLLOWING INFORMATION:

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

B. THE TAXPAYER IDENTIFICATION NUMBER OR EMPLOYER IDENTIFICATION NUMBER, AND THE DUN AND BRADSTREET NUMBER OF THE CONTRACTOR OR SUBCONTRACTOR;

C. THE CONTRACTOR OR SUBCONTRACTOR'S TYPE OF BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO CORPORATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, LIMITED PARTNERSHIP, JOINT VENTURE OR SOLE PROPRIETOR;

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

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

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

G. ANY VIOLATIONS OF STATE OR FEDERAL LAWS RELATING TO UNEMPLOYMENT COMPENSATION, WORKERS' COMPENSATION, OCCUPATIONAL HEALTH AND SAFETY, EMPLOYEE MISCLASSIFICATION, EMPLOYMENT DISABILITY, EMPLOYMENT DISCRIMINATION, OR OTHER LABOR LAWS;

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

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

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

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

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

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

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

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

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

Q. WHETHER HEALTH INSURANCE IS PROVIDED TO EMPLOYEES.

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

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

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

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

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

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

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

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

(II) THE EQUIPMENT TO BE USED FOR THE CONTRACT IS NOT SAFE FOR OPERATION BY EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTORS, OR FOR THE PUBLIC;

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

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

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

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

(VII) ANY OTHER INFORMATION FROM THE QUESTIONNAIRE WHICH RAISES SERIOUS QUESTIONS CONCERNING THE PRESENT CAPABILITY AND RESPONSIBILITY OF THE CONTRACTOR OR ANY SUBCONTRACTOR TO PERFORM THE CONTRACT.

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