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

3507

2009-2010 Regular Sessions

I N S E N A T E

March 20, 2009

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to service contracts entered into by a regulated electric and gas utility

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

Section 1. Legislative findings and intent. The employees of New York state's electric and gas utilities provide a wide variety of essential services that enhance the quality of life for the people of this state. It is the public policy of this state, expressed in the public service law, that these services be provided in the most reliable, cost efficient, and effective manner, with the highest possible standards and the least threat of corruption. This can best be achieved through the employment of regulated utility employees who have a record of successful, high quality, professional maintenance, clerical, and other technical work. Therefore, it is the intent of this legislature that professional, maintenance, clerical, and technical duties be performed by employees of a regulated utility unless, due to special and particular circumstances, they must be performed by a private contractor or unless such duties have customarily and historically been performed by such contractors.

S 2. Article 9 and sections 150, 151, 152, 153 and 154 of the public service law, article 9 and sections 151, 152 and 154, as renumbered by chapter 792 of the laws of 1930, are renumbered article 10 and sections 155 to 159, respectively, and a new article 9 is added to read as follows:

ARTICLE 9

SUBCONTRACTING

SECTION 150. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES.

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

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S 150. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES. 1. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS, UNLESS OTHERWISE SPECIFIED:

(A) "UTILITY" MEANS AN ELECTRIC CORPORATION, A GAS CORPORATION, OR AN ELECTRIC AND GAS CORPORATION AS DEFINED IN SECTION TWO OF THIS CHAPTER.

(B) "CONTRACT" MEANS AN ENFORCEABLE AGREEMENT, ENTERED INTO BY A CONTRACTOR AND THE UTILITY, WHICH EXCEEDS TWO HUNDRED FIFTY THOUSAND DOLLARS. A SINGLE CONTRACT WHICH IS DIVIDED INTO SEPARATE CONTRACTS SOLELY TO AVOID THE APPLICATION OF THIS ARTICLE SHALL BE DEEMED A SINGLE CONTRACT FOR PURPOSES OF THIS ARTICLE.

(C) "CONTRACTOR" MEANS ANY PERSON, PARTNERSHIP, FIRM, CORPORATION, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY RENDERING OR PROVIDING PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES PURSUANT TO A CONTRACT WITH THE UTILITY.

(D) "SERVICES" MEANS ANY PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES CURRENTLY PERFORMED BY MEMBERS OF THE PROFESSIONAL, MAINTENANCE, CLERICAL, AND TECHNICAL BARGAINING UNIT OF THE UTILITY OR WHICH COME WITHIN THE SCOPE OF THE PROFESSIONAL PRACTICE OF THE MEMBERS OF SUCH BARGAINING UNIT.

(E) "CHANGE ORDER" MEANS A WRITTEN ORDER BY A UTILITY DIRECTING THE CONTRACTOR TO MAKE CHANGES IN A CONTRACT.

(F) "CONTRACT MODIFICATION" MEANS ANY WRITTEN ALTERATION TO SPECIFICATIONS, DELIVERY POINT, RATE OF DELIVERY, PERIOD OF PERFORMANCE, PRICE, QUALITY, OR OTHER PROVISIONS OF ANY CONTRACT ACCOMPLISHED BY MUTUAL ACTION OF THE PARTIES TO THE CONTRACT.

2. GUIDELINES FOR CONTRACTING FOR SERVICES. NO CONTRACT WITH A CONTRACTOR FOR SERVICES SHALL BE ENTERED INTO BY A UTILITY UNLESS CONTRACTING FOR SUCH SERVICES IS:

(A) COST EFFECTIVE WHEN COMPARED TO THE COST OF HAVING A UTILITY PERFORM THE WORK; OR

(B) REQUIRED FOR A SHORT DURATION, MAKING IT IMPRACTICAL TO HIRE BARGAINING UNIT EMPLOYEES TO PERFORM THE SERVICE; OR

(C) REQUIRED FOR SPECIAL EXPERTISE NOT CURRENTLY AVAILABLE IN THE BARGAINING UNIT; OR

(D) REQUIRED DUE TO AN URGENT NEED SUCH THAT THE DELAY IN HIRING EMPLOYEES WOULD FRUSTRATE THE PUBLIC INTEREST; OR

(E) REQUIRED TO AVOID A CONFLICT OF INTEREST; OR

(F) OTHERWISE REQUIRED TO BE SO CONTRACTED; OR

(G) IN COMPLIANCE WITH THE UTILITY'S AFFIRMATIVE ACTION EFFORTS AND WILL NOT CAUSE THE UTILITY TO FAIL TO MEET ITS AFFIRMATIVE ACTION GOALS. A CONTRACTOR MUST ALSO MEET OR EXCEED THE UTILITY'S GOALS FOR AFFIRMATIVE ACTION; OR

(H) IN COMPLIANCE WITH THE REQUIREMENTS OF APPLICABLE STATE, LOCAL, AND FEDERAL LAW.

3. IN DETERMINING IF A CONTRACT IS COST EFFECTIVE, THE UTILITY SHALL PERFORM A COST BENEFIT ANALYSIS WHICH SHALL EVALUATE, BUT NOT BE LIMITED TO, THE FOLLOWING FACTORS:

(A) REIMBURSEMENT FROM OTHER SOURCES;

(B) BOTH THE DIRECT AND INDIRECT COSTS OF PERFORMING THE WORK;

(C) WHETHER OR NOT THE CONTRACTOR PROVIDES WAGES AND SUPPLEMENTS TO ITS EMPLOYEES WHICH ARE COMPARABLE TO THOSE PAID TO SIMILAR EMPLOYEES PERFORMING SIMILAR WORK IN THE GEOGRAPHIC AREA WHERE THE WORK IS TO BE PROVIDED. A CONTRACT MAY NOT BE CONSIDERED COST EFFECTIVE IF SUCH WAGES AND SUPPLEMENTS ARE SUBSTANTIALLY BELOW THOSE CUSTOMARILY PAID IN THE AREA;

(D) THE QUALITY OF SERVICE BEING PROVIDED.

4. REVIEW OF CONTRACTS FOR SERVICES. (A) PRIOR TO EXECUTING A CONTRACT FOR SERVICES, A UTILITY SHALL PREPARE A SPECIFIC STATEMENT WHICH SETS FORTH THE OBJECTIVE DATA SUPPORTING THE REASONS WHY THE PROPOSED CONTRACT MEETS THE REQUIREMENTS SET FORTH IN SUBDIVISION TWO OF THIS SECTION.

(B) (1) PRIOR TO THE SCHEDULED AWARD OF A CONTRACT FOR SERVICES, A UTILITY SHALL PROVIDE TO THE EMPLOYEE ORGANIZATION THAT REPRESENTS UTILITY EMPLOYEES WHO WOULD OTHERWISE PERFORM SUCH SERVICES WITH COPIES OF THE STATEMENT RENDERED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION AND THE PROPOSED CONTRACT SO THAT SUCH EMPLOYEE ORGANIZATION SHALL HAVE AT LEAST FIFTEEN DAYS TO OBJECT TO THE PROPOSED CONTRACT. AN EMPLOYEE ORGANIZATION WHICH PROVIDES TIMELY WRITTEN NOTICE OF OBJECTION AND THE REASONS THEREFOR SHALL, UNLESS THE UTILITY AGREES IN WRITING TO WITHDRAW THE PROPOSED CONTRACT, BE PERMITTED TO BE HEARD BY THE COMMISSION ON ITS OBJECTIONS PRIOR TO THE AWARD OF THE CONTRACT. WITHIN FIFTEEN DAYS OF RECEIPT OF ANY SUCH OBJECTIONS, THE COMMISSION, AFTER CONSIDERING THE OBJECTIONS OF THE EMPLOYEE ORGANIZATION, SHALL NOTIFY THE EMPLOYEE ORGANIZATION WHETHER THE UTILITY WILL WITHDRAW THE PROPOSED CONTRACT OR ENTER INTO THE CONTRACT. IF THE UTILITY DECIDES TO ENTER INTO THE CONTRACT, AND THE EMPLOYEE ORGANIZATION STILL BELIEVES THAT THE CONTRACT IS IN VIOLATION OF THE GUIDELINES IN SUBDIVISION TWO OF THIS SECTION, THE EMPLOYEE ORGANIZATION MAY FORWARD ITS COMPLAINT TO THE COMMISSION WITHIN FIVE DAYS OF RECEIPT OF THE COMMISSION'S NOTIFICATION. BEFORE APPROVING SUCH CONTRACT, THE COMMISSION SHALL CONSIDER THE EMPLOYEE ORGANIZATION'S COMPLAINT, AND SHALL NOT APPROVE SUCH CONTRACT IF IT BELIEVES SUCH COMPLAINT IS VALID. THE COMMISSION SHALL NOTIFY THE EMPLOYEE ORGANIZATION OF ITS DECISION TO EITHER APPROVE OR DISAPPROVE THE CONTRACT. IF THE COMMISSION APPROVES THE CONTRACT, THE EMPLOYEE ORGANIZATION, IF IT HAS COMPLIED WITH THE PROVISIONS OF THIS SECTION, SHALL HAVE THE RIGHT TO BRING A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES TO DETERMINE WHETHER THE APPROVAL WAS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. IN CARRYING OUT ITS DUTIES UNDER THIS SECTION, THE COMMISSION SHALL FORM AN ADVISORY BOARD, WHICH SHALL CONSIST OF REPRESENTATIVES OF THE STATE GOVERNMENT, EMPLOYEE ORGANIZATIONS, AND THE PUBLIC.

(2) NOTWITHSTANDING THE PROVISIONS CONTAINED WITHIN SUBPARAGRAPH ONE OF THIS PARAGRAPH, THE EMPLOYEE ORGANIZATION MAY BE PROVIDED LESS THAN THE REQUIRED FIFTEEN DAYS TO OBJECT TO THE PROPOSED CONTRACT WHEN THE CONTRACT IS REQUIRED TO RESPOND TO AN EMERGENCY AS DEFINED IN PARAGRAPH (D) OF SUBDIVISION TWO OF THIS SECTION.

5. CHANGE ORDERS AND CONTRACT MODIFICATIONS. IF A UTILITY INTENDS TO CHANGE, BY USE OF A CHANGE ORDER OR CONTRACT MODIFICATION, A CONTRACT FOR SERVICES, AND SUCH CHANGE RESULTS IN CAUSING THE AMOUNT OF THE CONTRACT TO EXCEED ONE HUNDRED TWENTY-FIVE PERCENT OF THE ORIGINAL CONTRACT AMOUNT, THEN APPROVAL OF SUCH CHANGES SHALL BE SUBJECT TO THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION.

S 3. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.