

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

5559--B

2009-2010 Regular Sessions

I N S E N A T E

May 15, 2009

Introduced by Sens. OPPENHEIMER, KLEIN, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law and the general municipal law, in relation to assignment of contracts by school districts and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Section 305 of the education law is amended by adding a new
2 subdivision 42 to read as follows:
3 42. THE COMMISSIONER SHALL COMMISSION A SURVEY ON THE IMPACT OF
4 EXEMPTING SCHOOL DISTRICTS FROM THE SEPARATE BIDDING REQUIREMENTS OF THE
5 GENERAL MUNICIPAL LAW PURSUANT TO THE PROVISIONS OF SUBDIVISION SIX OF
6 SECTION ONE HUNDRED ONE OF THE GENERAL MUNICIPAL LAW. SUCH STUDY SHALL
7 INCLUDE THE IMPACT ON TIMEFRAMES FOR COMPLETING CONSTRUCTION AND
8 IMPROVEMENT PROJECTS, THE OVERALL COSTS OF SUCH PROJECTS AND THE INTEG-
9 RITY OF THE BIDDING PROCESS. THE COMMISSIONER SHALL ISSUE THE RESULTS OF
10 SUCH SURVEY TO THE GOVERNOR, THE STATE COMPTROLLER, THE TEMPORARY PRESI-
11 DENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY IN THE FOURTH YEAR
12 FOLLOWING THE EFFECTIVE DATE OF THIS SUBDIVISION.
13 S 2. Section 101 of the general municipal law is amended by adding a
14 new subdivision 6 to read as follows:
15 6. A. NOTWITHSTANDING SUBDIVISION ONE OF THIS SECTION AND ANY OTHER
16 LAW TO THE CONTRARY, ANY CONTRACT, SUBCONTRACT, LEASE, GRANT, BOND,
17 COVENANT, OR OTHER AGREEMENT FOR PROJECTS UNDERTAKEN BY SCHOOL DISTRICTS
18 SHALL NOT BE SUBJECT TO THE REQUIREMENTS OF SEPARATE SPECIFICATIONS
19 (REFERRED TO AS THE WICKS LAW).

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

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1 B. WHERE A SCHOOL DISTRICT ELECTS TO PROVIDE FOR THE ASSIGNMENT OF A
2 CONTRACT TO A SINGLE PERSON, FIRM OR CORPORATION PURSUANT TO PARAGRAPH A
3 OF THIS SUBDIVISION, SUCH SCHOOL DISTRICT MAY REQUIRE THE APPARENT LOW
4 BIDDER AND, AT THE DISCRETION OF THE SCHOOL DISTRICT, THE NEXT APPARENT
5 LOW BIDDER, TO SUBMIT TO THE DISTRICT THE NAMES OF THE BIDDER'S PROPOSED
6 SUBCONTRACTORS FOR THE ELECTRICAL WORK, HEATING, VENTILATING AND AIR
7 CONDITIONING WORK, AND THE PLUMBING WORK. ONLY ONE PROPOSED SUBCONTRACTOR
8 SHALL BE NAMED FOR EACH SUCH TRADE. SUCH PROPOSED SUBCONTRACTOR OR
9 SUBCONTRACTORS MAY BE REJECTED BY THE SCHOOL DISTRICT ON THE BASIS SET
10 FORTH IN PARAGRAPH E OF THIS SUBDIVISION. UPON REJECTION OF A PROPOSED
11 SUBCONTRACTOR OR SUBCONTRACTORS, THE SCHOOL DISTRICT MAY REQUIRE THE
12 APPARENT LOW BIDDER TO SUBMIT AN ALTERNATE PROPOSED SUBCONTRACTOR OR
13 SUBCONTRACTORS WITHIN FORTY-EIGHT HOURS. SHOULD THE APPARENT LOW BIDDER
14 FAIL TO PROPOSE ALTERNATE SUBCONTRACTORS SUBJECT TO APPROVAL BY THE
15 SCHOOL DISTRICT, THE SCHOOL DISTRICT MAY CONSIDER THE NEXT APPARENT LOW
16 BIDDER AND SHALL FOLLOW THE SAME PROCEDURE SET FORTH IN THIS PARAGRAPH.
17 SUCH PROPOSED SUBCONTRACTORS OF THE BIDDER, APPROVED BY THE SCHOOL
18 DISTRICT SHALL BE USED ON THE WORK FOR WHICH THEY WERE PROPOSED AND
19 APPROVED, AND THEY SHALL NOT BE CHANGED EXCEPT WITH THE SPECIFIC WRITTEN
20 APPROVAL OF THE DISTRICT.

21 C. PAYMENT TO THE SUBCONTRACTORS APPROVED PURSUANT TO PARAGRAPH B OF
22 THIS SUBDIVISION SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF SECTION
23 ONE HUNDRED SIX-B OF THIS ARTICLE. IN THE EVENT ANY SUCH SUBCONTRACTOR
24 IS NOT PAID BY THE CONTRACTOR, THE SUBCONTRACTOR SHALL IMMEDIATELY NOTI-
25 FY THE SCHOOL DISTRICT OF SUCH FACT.

26 D. WITH THE SUBMISSION OF THE NAMES OF THE PROPOSED SUBCONTRACTORS AS
27 PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, THE BIDDER SHALL SPECIFY
28 THE AMOUNT TO BE PAID TO EACH SUBCONTRACTOR FOR THE WORK TO BE PERFORMED
29 BY SUCH SUBCONTRACTOR.

30 E. A SCHOOL DISTRICT MAY REJECT ANY OR ALL BIDS OR WAIVE ANY INFORMAL-
31 ITY IN A BID IF THE SCHOOL DISTRICT REASONABLY BELIEVES THAT THE PUBLIC
32 INTEREST WILL BE PROMOTED THEREBY. A SCHOOL DISTRICT MAY REJECT ANY BID
33 IF, IN THE JUDGMENT OF THE SCHOOL DISTRICT, THE BUSINESS ORGANIZATION,
34 RESOURCES, FINANCIAL STANDING, OR EXPERIENCE OF THE BIDDER JUSTIFIES
35 SUCH REJECTION IN VIEW OF THE WORK TO BE PERFORMED.

36 F. THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO THE NEW YORK
37 CITY SCHOOL CONSTRUCTION AUTHORITY ESTABLISHED PURSUANT TO TITLE SIX OF
38 ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW.

39 S 3. This act shall take effect on the one hundred eightieth day after
40 it shall have become a law, and shall apply to all contracts advertised
41 or solicited for bid on or after such effective date; provided that this
42 act shall expire and be deemed repealed 5 years after such effective
43 date.