

3512

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 25, 2011

---

Introduced by M. of A. KAVANAGH, GALEF, KELLNER, ORTIZ, MOLINARO, DINOW-ITZ, ZEBROWSKI, BROOK-KRASNY, SCHIMEL -- Multi-Sponsored by -- M. of A. BRENNAN, CALHOUN, GIGLIO, JAFFEE, JEFFRIES, KOLB, LUPARDO, MAISEL, McDONOUGH, McENENY, SWEENEY, THIELE, TITONE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the state finance law, in relation to the disqualification of tax delinquent bidders and certain exceptions

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

1     Section 1. The state finance law is amended by adding a new section  
2     169 to read as follows:  
3     S 169. DISQUALIFICATION OF TAX DELINQUENT BIDDERS. 1. SUBSEQUENT TO  
4     RECEIVING BIDS AND PRIOR TO ENTERING INTO A CONTRACT WITH A BIDDER,  
5     WHERE THAT BIDDER HAS OR WILL CONDUCT BUSINESS IN NEW YORK STATE, OR  
6     PRIOR TO FORMALLY APPROVING A CONTRACT BETWEEN A BIDDER AND A SUBCON-  
7     TRACTOR, EACH AGENCY, AS DEFINED IN SECTION NINETY-TWO OF THE PUBLIC  
8     OFFICERS LAW, SHALL REVIEW THE LIST OF WARRANTS TRANSMITTED TO THE  
9     DEPARTMENT OF STATE BY THE DEPARTMENT OF TAXATION AND FINANCE PURSUANT  
10    TO SECTION SIX OF THE TAX LAW TO DETERMINE WHETHER THE BIDDER OR SUBCON-  
11    TRACTOR HAS AN UNSATISFIED TAX WARRANT FILED AGAINST HIM OR HER WITH THE  
12    DEPARTMENT OF STATE. NO AGENCY, AS DEFINED IN SECTION NINETY-TWO OF THE  
13    PUBLIC OFFICERS LAW, SHALL BE PERMITTED TO ENTER INTO A CONTRACT WITH,  
14    OR FORMALLY APPROVE A SUBCONTRACT TO, A BIDDER OR SUBCONTRACTOR WHO HAS  
15    AN UNSATISFIED TAX WARRANT FILED AGAINST HIM OR HER PURSUANT TO SECTION  
16    SIX OF THE TAX LAW.  
17    2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION,  
18    A CONTRACT MAY BE ENTERED INTO WITH A BIDDER WHO HAS AN OUTSTANDING TAX  
19    WARRANT IF:  
20    A. THE AGENCY DETERMINES THAT AN EMERGENCY CONDITION EXISTS INVOLVING  
21    DANGER TO THE LIFE, HEALTH, OR SAFETY OF ANY PERSON OR THE SAFETY OF ANY  
22    STRUCTURE THAT REQUIRES IMMEDIATE ACTION AND THE NATURE OF THE WORK IS

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

LBD01013-01-1

1 SUCH THAT IT WOULD BE IMPRACTICAL AND AGAINST THE PUBLIC INTEREST TO  
2 HAVE PUBLIC LETTING OF THE CONTRACT, OR THE ITEM TO BE PURCHASED IS  
3 ESSENTIAL TO THE EFFICIENT OPERATION OR THE ADEQUATE PROVISION OF  
4 SERVICE AND AS A CONSEQUENCE OF AN EMERGENCY CONDITION SUCH PURCHASE  
5 CANNOT AWAIT COMPETITIVE BIDDING; OR

6 B. THE ITEM TO BE PURCHASED IS AVAILABLE ONLY FROM A SINGLE SOURCE AND  
7 THAT SOURCE IS THE BIDDER WITH THE OUTSTANDING TAX WARRANT; OR

8 C. THE BIDDER HAS DISCLOSED THE EXISTENCE OF THE TAX WARRANT PRIOR TO  
9 OFFERING HIS OR HER BID, HAS PROVIDED THE AGENCY WITH PROOF SUFFICIENT  
10 TO THE COMPTROLLER THAT THE BIDDER IS, IN GOOD FAITH, ATTEMPTING TO  
11 SATISFY THE TAX WARRANT, AND/OR THE DEPARTMENT OF TAXATION AND FINANCE  
12 HAS DECLARED THE OUTSTANDING TAX WARRANT TO BE DE MINIMIS IN NATURE AND  
13 THUS DOES NOT WARRANT THE DISQUALIFICATION OF THE BIDDER.

14 3. FOR THE PURPOSES OF PARAGRAPH A OF SUBDIVISION TWO OF THIS SECTION,  
15 THE TERM "EMERGENCY CONDITION" SHALL MEAN A CONDITION CAUSED BY A  
16 NATURAL DISASTER, FIRE, OR OTHER CASUALTY, OR ANOTHER UNANTICIPATED,  
17 SUDDEN, AND UNEXPECTED OCCURRENCE THAT REQUIRES THE IMMEDIATE ATTENTION  
18 AND ACTION OF THE AGENCY.

19 4. PRIOR TO AWARDED A CONTRACT UNDER THE PROVISIONS OF PARAGRAPH A OF  
20 SUBDIVISION TWO OF THIS SECTION, THE AGENCY SHALL NOTIFY THE COMPTROLLER  
21 OF ITS INTENT TO AWARD THE CONTRACT AND SHALL SPECIFY THE REASONS USED  
22 BY THE AGENCY TO MAKE THE REQUIRED DETERMINATIONS. THE COMPTROLLER  
23 SHALL REVIEW THE DETERMINATIONS OF THE AGENCY AND IF, IN THE DETERMI-  
24 NATION OF THE COMPTROLLER, THE REASONS SPECIFIED BY THE AGENCY DO NOT  
25 SATISFY THE REQUIREMENTS OF PARAGRAPH A OF SUBDIVISION TWO OF THIS  
26 SECTION, THE COMPTROLLER SHALL HAVE THE AUTHORITY TO DEEM THE AWARDED  
27 CONTRACT NULL AND VOID AND UNENFORCEABLE AND TO REQUIRE THE AGENCY TO  
28 USE THE COMPETITIVE BIDDING PROCESS FOR THE CONTRACT.

29 5. FOR PURPOSES OF PARAGRAPH C OF SUBDIVISION TWO OF THIS SECTION, THE  
30 COMPTROLLER SHALL HAVE THE AUTHORITY TO MAKE A DETERMINATION OF WHETHER  
31 PROOF SUFFICIENT EXISTS TO SATISFY THE TAX WARRANT.

32 S 2. This act shall take effect on the one hundred twentieth day after  
33 it shall have become a law; provided that all state agencies, as defined  
34 in paragraph (g) of subdivision 1 of section 73 of the public officers  
35 law, are authorized to promulgate any and all rules and regulations and  
36 take any other measures necessary to implement this act on its effective  
37 date on or before such date.