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

5149--B

2011-2012 Regular Sessions

I N S E N A T E

May 3, 2011

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- 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 labor law, the general municipal law, the state finance law and the education law, in relation to advertisements for bids

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

Section 1. Paragraph (c) of subdivision 3 of section 220 of the labor law, as separately amended by chapter 678 of the laws of 2007 and section 2 of chapter 7 of the laws of 2008, is amended to read as follows:

(c) It shall be the duty of the fiscal officer, as defined in this section, to ascertain and determine the schedules of supplements to be provided and wages to be paid workers, laborers and mechanics on such public work, prior to the time of the advertisement for bids, and such schedules shall be annexed to and form a part of the specifications for the work. Such fiscal officer shall file with the department having jurisdiction such schedules prior to the time of the commencement of the advertisement for bids on all public works proposed to be constructed. IF THE FISCAL OFFICER CANNOT ASCERTAIN OR DETERMINE SUCH SCHEDULES OR WAGES, OR DISTINGUISH BETWEEN THE CLASSIFICATIONS OF WORKERS ON SUCH PUBLIC WORK, IT SHALL BE THE DUTY OF THE FISCAL OFFICER TO REJECT ANY CONTRACT ASSOCIATED WITH THE ADVERTISEMENT FOR BIDS. The term "contract" as used in this article also shall include reconstruction and repair of any such public work, and any public work performed under a lease, permit or other agreement pursuant to which the department of jurisdiction grants the responsibility of contracting for such public work to any third party proposing to perform such work to which the provisions

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

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of this article would apply had the department of jurisdiction contracted directly for its performance, or where there is no lease, permit or other agreement and ownership of a public work is intended to be assumed by such public entity at any time subsequent to completion of the public work.

S 2. Paragraph (c) of subdivision 3 of section 220 of the labor law, as amended by section 2 of chapter 7 of the laws of 2008, is amended to read as follows:

(c) It shall be the duty of the fiscal officer, as defined in this section, to ascertain and determine the schedules of supplements to be provided and wages to be paid workmen, laborers and mechanics on such public work, prior to the time of the advertisement for bids, and such schedules shall be annexed to and form a part of the specifications for the work. Such fiscal officer shall file with the department having jurisdiction such schedules to the time of the commencement of the advertisement for bids on all public works proposed to be constructed. IF THE FISCAL OFFICER CANNOT ASCERTAIN OR DETERMINE SUCH SCHEDULES OR WAGES, OR DISTINGUISH BETWEEN THE CLASSIFICATIONS OF WORKERS ON SUCH PUBLIC WORK, IT SHALL BE THE DUTY OF THE FISCAL OFFICER TO REJECT ANY CONTRACT ASSOCIATED WITH THE ADVERTISEMENT FOR BIDS. The term "contract" as used in this subdivision also shall include reconstruction and repair of any such public work.

S 2-a. Section 222 of the labor law is amended by adding a new subdivision 3 to read as follows:

3. FOR PURPOSES OF THIS SECTION ONLY, JOB ORDER CONTRACTING WILL BE PERMISSIBLE WHERE THE CONTRACTOR HAS ENTERED INTO A PROJECT LABOR AGREEMENT. "JOB ORDER CONTRACTING" IS A COMPETITIVE BID, INDEFINITE QUANTITY, FIXED PRICE, MULTI-TASK CONTRACT, WHERE A BASE CONTRACT IS AWARDED WITH PRE-ESTABLISHED TASKS AND PRICES, SPECIFICATIONS AND GENERAL CONTRACT CONDITIONS. CONTRACTORS ARE PERMITTED TO BID BY SUBMITTING A COEFFICIENT OR COEFFICIENTS, FOR A JOB ORDER CONTRACT, BASED ON A UNIT PRICE BOOK, WHICH CONTAINS A LIST OF ALL TASKS THAT MAY BE PERFORMED USING THE BASE CONTRACT.

S 3. Subdivision 1 of section 103 of the general municipal law, as amended by section 1 of part FF of chapter 56 of the laws of 2010, is amended to read as follows:

1. Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district, to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section. In any case where a responsible bidder's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the low bid. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his or her or its discretion, reject all bids and readvertise for new bids in the manner provided by this section. ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK CONTRACTS MUST BE FOR A FIXED DOLLAR AMOUNT. In determining whether a

purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. For purposes of this section, "sealed bids", as that term applies to purchase contracts, shall include bids submitted in an electronic format including submission of the statement of non-collusion required by section one hundred three-d of this article, provided that the governing board of the political subdivision or district, by resolution, has authorized the receipt of bids in such format. Submission in electronic format may, for technology contracts only, be required as the sole method for the submission of bids. Bids submitted in an electronic format shall be transmitted by bidders to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must (a) document the time and date of receipt of each bid received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid until the time and date established for the opening of bids. The timely submission of an electronic bid in compliance with instructions provided for such submission in the advertisement for bids and/or the specifications shall be the responsibility solely of each bidder or prospective bidder. No political subdivision or district therein shall incur any liability from delays or interruptions in the receiving device designated for the submission and receipt of electronic bids.

S 4. Subdivision 1 of section 103 of the general municipal law, as amended by section 2 of part FF of chapter 56 of the laws of 2010, is amended to read as follows:

1. Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district, to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section. ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK CONTRACTS MUST BE FOR A FIXED DOLLAR AMOUNT. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period

commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. In any case where a responsible bidder's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the low bid. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his, her or its discretion, reject all bids and readvertise for new bids in the manner provided by this section.

S 5. Subdivision 2 of section 103 of the general municipal law, as amended by section 5 of part X of chapter 62 of the laws of 2003, is amended to read as follows:

2. Advertisement for bids shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such notice will be publicly opened and read, and the designation of the receiving device if the political subdivision or district has authorized the receipt of bids in an electronic format. SUCH ADVERTISEMENT SHALL DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. Such board or agency may by resolution designate any officer or employee to open the bids at the time and place specified in the notice. Such designee shall make a record of such bids in such form and detail as the board or agency shall prescribe and present the same at the next regular or special meeting of such board or agency. All bids received shall be publicly opened and read at the time and place so specified. At least five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of bids.

S 6. Subdivision 2 of section 103 of the general municipal law, as amended by chapter 296 of the laws of 1958, is amended to read as follows:

2. Advertisement for bids shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such notice will be publicly opened and read. SUCH ADVERTISEMENT SHALL DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. Such board or agency may by resolution designate any officer or employee to open the bids at the time and place specified in the notice. Such designee shall make a record of such bids in such form and detail as the board or agency shall prescribe and present the same at the next regular or special meeting of such board or agency. All bids received shall be publicly opened and read at the time and place so specified. At least

five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of bids.

S 7. The first undesignated paragraph of section 135 of the state finance law, as amended by section 3 of part MM of chapter 57 of the laws of 2008, is amended to read as follows:

Such specifications must be so drawn as to permit separate and independent bidding upon each of the above three subdivisions of work. All contracts hereafter awarded by the state or a department, board, commissioner or officer thereof, for the erection, construction or alteration of buildings, or any part thereof, shall award the three subdivisions of the above specified work separately to responsible and reliable persons, firms or corporations engaged in these classes of work. A contract for one or more buildings in any project shall be awarded to the lowest responsible bidder for all the buildings included in the specifications. ALL SUCH SPECIFICATIONS ISSUED PURSUANT TO THIS ARTICLE SHALL DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. EACH BIDDER FOR ANY PROJECT UNDER THIS ARTICLE SHALL SUBMIT BIDS FOR A FIXED DOLLAR AMOUNT.

S 8. Subdivision 2 of section 161 of the state finance law is amended by adding a new paragraph o to read as follows:

O. CONSULT WITH AND ADVISE THE COMMISSIONER ON THE USE OF JOB ORDER CONTRACTING WITH RESPECT TO PUBLIC WORK PROJECTS WHICH MUST COMPLY WITH ARTICLE EIGHT OF THE LABOR LAW.

S 9. Paragraph a of subdivision 6 of section 2590-p of the education law, as added by chapter 738 of the laws of 1988, is amended to read as follows:

a. For each project included in an approved five-year educational facilities capital plan, the chancellor shall develop a detailed scope of the project, which shall include the following: (i) the purposes and public to be served, (ii) the programs to be conducted in the facility, (iii) the gross amounts of space and bulk for any building or structure, (iv) identification of the intent to use architectural, engineering or other consultant services and estimated fees for such consultant services, (v) the schedule of design and construction, (vi) the total estimated project costs, including costs for site acquisition, preparation and tenant relocation, design, construction and equipment, (vii) maximum estimated expenditures for the project for each fiscal year until its completion, (viii) costs associated with maintenance and operation of the physical plant and (ix) such other information as the chancellor shall specify. In the event, a project consists of a program element without identification of the particular education facility at which such project is to be performed, the detailed scope of the project shall specify the nature of the work to be performed, applicable price and quality standards, a list of the schools eligible for such work, annual performance targets and the total estimated costs of such project during each fiscal year until its completion. ALL SUCH ESTIMATED COSTS AND PRICES SHALL BE FOR A FIXED DOLLAR AMOUNT.

S 10. Paragraph d of subdivision 6 of section 2590-p of the education law, as amended by chapter 91 of the laws of 2002, is amended to read as follows:

d. For projects to be funded pursuant to subdivision four of this section, the chancellor shall transmit the detailed scope of each such project to the director of management and budget of the city for approval.

(i) Except as provided in paragraph b of this subdivision, no expenses shall be incurred by the city board or the authority for any such project prior to approval of the detailed scope of any such project. SUCH DETAILED SCOPE OF THE PROJECT SHALL DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE PERFORMED.

(ii) No detailed scope of project shall be approved unless the total estimated costs of such project, together with the aggregate estimated costs of all projects for which a detailed scope has theretofore been approved, are within city capital budget appropriations available therefor. A detailed scope of project that is not disapproved by the director of management and budget within thirty days of its submission shall be deemed approved. To the extent the director disapproves all or part of a scope, he or she shall set forth in writing the reasons therefor.

(iii) Upon approval of the detailed scope of project, the chancellor shall refer such project to the New York city school construction authority for implementation in accordance with an agreement between the authority and the city board and shall transmit the approved project scope to the comptroller, whereupon the total estimated costs of such project as set forth in such approved project scope shall be available for expenditure. ALL SUCH ESTIMATED COSTS SHALL BE FOR A FIXED DOLLAR AMOUNT.

(iv) Approval of the director of management and budget shall be required for any material change in the approved detailed scope of project or for any increase in the total cost of such project in excess of any reserve provided in the approved detailed scope of project. Such approval shall be given or deemed given in the manner provided herein.

(v) The provisions of this paragraph shall not apply to emergency projects undertaken pursuant to paragraph h of subdivision two of this section, the estimated costs of which, together with the costs of other projects undertaken pursuant to said paragraph h, does not exceed the amount set forth in the educational facilities capital plan for activities pursuant to paragraph h of subdivision two of this section.

S 11. Paragraph d of subdivision 6 of section 2590-p of the education law, as added by chapter 738 of the laws of 1988, is amended to read as follows:

d. For projects to be funded pursuant to subdivision four of this section, the chancellor shall transmit the detailed scope of each such project to the director of management and budget of the city for approval.

(i) Except as provided in paragraph b of this subdivision, no expenses shall be incurred by the city board or the authority for any such project prior to approval of the detailed scope of any such project. SUCH DETAILED SCOPE OF THE PROJECT SHALL DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE PERFORMED.

(ii) No detailed scope of project shall be approved unless the total estimated costs of such project, together with the aggregate estimated costs of all projects for which a detailed scope has theretofore been approved, are within city capital budget appropriations available therefor. A detailed scope of project that is not disapproved by the director of management and budget within thirty days of its submission shall be deemed approved. To the extent the director disapproves all or part of a scope, he shall set forth in writing the reasons therefor.

(iii) Upon approval of the detailed scope of project, the chancellor shall refer such project to the New York city school construction authority for implementation in accordance with an agreement between the authority and the city board and shall transmit the approved project

scope to the comptroller whereupon the total estimated costs of such project as set forth in such approved project scope shall be available for expenditure. ALL SUCH ESTIMATED COSTS SHALL BE FOR A FIXED DOLLAR AMOUNT.

(iv) Approval of the director of management and budget shall be required for any material change in the approved detailed scope of project or for any increase in the total cost of such project in excess of any reserve provided in the approved detailed scope of project. Such approval shall be given or deemed given in the manner provided herein.

(v) The provisions of this paragraph shall not apply to emergency projects undertaken pursuant to paragraph h of subdivision two of this section, the estimated costs of which, together with the costs of other projects undertaken pursuant to said paragraph h, does not exceed the amount set forth in the educational facilities capital plan for activities pursuant to paragraph h of subdivision two of this section.

S 12. This act shall take effect on the ninetieth day after it shall have become a law; provided, however, that:

(a) the amendments to paragraph (c) of subdivision 3 of section 220 of the labor law made by section one of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 5 of chapter 678 of the laws of 2007, as amended, when upon such date the provisions of section two of this act shall take effect;

(b) the amendments to subdivisions 1 and 2 of section 103 of the general municipal law made by sections three and five of this act shall be subject to the expiration and reversion of such subdivisions pursuant to subdivision (a) of section 41 of part X of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of sections four and six of this act, respectively, shall take effect; and

(c) the amendments to paragraph d of subdivision 6 of section 2590-p of the education law made by section ten of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 34 of chapter 91 of the laws of 2002, as amended, when upon such date the provisions of section eleven of this act shall take effect.