

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

5149--D

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 -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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 state finance law and the general municipal law, in relation to labor performed under certain public work contracts

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

1 Section 1. Subdivision 5 of section 220 of the labor law is amended by
2 adding a new paragraph m to read as follows:
3 M. "JOB ORDER CONTRACT" SHALL MEAN A COMPETITIVE BID, INDEFINITE QUAN-
4 TITY, FIXED PRICE, MULTI-TASK CONTRACT, WHERE A BASE CONTRACT IS AWARDED
5 WITH PRE-ESTABLISHED TASKS AND PRICES, SPECIFICATIONS AND GENERAL
6 CONTRACT CONDITIONS. CONTRACTORS ARE PERMITTED TO BID BY SUBMITTING A
7 COEFFICIENT OR COEFFICIENTS FOR A JOB ORDER CONTRACT BASED ON A UNIT
8 PRICE BOOK, WHICH CONTAINS A LIST OF ALL TASKS THAT MAY BE PERFORMED AS
9 PART OF THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT. SUCH
10 CONTRACTS MUST BE FILED WITH THE COMMISSIONER BY THE DEPARTMENT OF
11 JURISDICTION AND MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER SUCH
12 CONTRACT IS PURSUANT TO THIS SECTION.
13 S 2. The state finance law is amended by adding a new section 148 to
14 read as follows:
15 S 148. JOB ORDER CONTRACTS. 1. "JOB ORDER CONTRACT", SHALL HAVE THE
16 SAME MEANING AS SET FORTH IN PARAGRAPH M OF SUBDIVISION FIVE OF SECTION
17 TWO HUNDRED TWENTY OF THE LABOR LAW.

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

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2. THE JOB ORDER CONTRACT MUST HAVE A DEFINED SCOPE OF WORK, WHICH INCLUDES:

A. A LIMITATION TO ONE OF THE GEOGRAPHIC REGIONS COMMONLY REFERRED TO AS THE CAPITAL DISTRICT, MOHAWK VALLEY, CENTRAL NEW YORK, GENESEE VALLEY, WESTERN NEW YORK, SOUTHERN TIER, NORTH COUNTRY, LONG ISLAND OR NEW YORK CITY;

B. A DEFINED TRADE OF EITHER:

(I) BASIC TRADES, INCLUDING CARPENTERS, LABORERS AND BRICKLAYERS,

(II) PLUMBING AND GAS FITTING,

(III) STEAM HEATING, HOT WATER HEATING, VENTILATING AND AIR CONDITIONING APPARATUS,

(IV) ELECTRIC WIRING AND STANDARD ILLUMINATING FIXTURES,

(V) ROOFING,

(VI) WELDING,

(VII) IRONWORK,

(VIII) CONCRETE FINISHING, OR

(IX) PAINTING AND PLASTERING; AND

C. A DETAILED DESCRIPTION OF THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT, A LIST OF THE TASKS NECESSARY TO COMPLETE THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT AND THE TRADE CLASSIFICATIONS OF THE WORKERS, MECHANICS AND LABORERS WHO WILL PERFORM EACH OF THE LISTED TASKS IN THE BASE CONTRACT.

3. THE DEFINED SCOPE OF WORK TO BE PERFORMED UNDER THE BASE CONTRACT MUST NOT BE OVERLY BROAD SO AS TO PREVENT THE CONTRACTOR FROM MAKING AN INFORMED BID DURING THE COMPETITIVE BID PROCESS. THE CONTRACTING ENTITY MUST LIMIT THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT TO THOSE PRE-ESTABLISHED TASKS AND PRICES REFERRED TO IN THE GENERAL CONTRACT CONDITIONS.

4. BEFORE SOLICITING BIDS FOR THE BASE CONTRACT, THE CONTRACTING ENTITY SHALL FILE ALL INFORMATION REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW WITH THE FISCAL OFFICER. THE CONTRACTING ENTITY MAY NOT SOLICIT BIDS FOR THE CONTRACT UNTIL ALL REQUIREMENTS OF SUBPARAGRAPH (I) OF PARAGRAPH A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW HAVE BEEN SATISFIED.

5. THE COST OF A JOB ORDER CONTRACT MAY NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS. SUCH CONTRACT IS LIMITED TO ONE YEAR AND MAY BE RENEWED FOR AN ADDITIONAL TWELVE MONTHS TWICE SO LONG AS THE FIVE HUNDRED THOUSAND DOLLAR THRESHOLD HAS NOT BEEN REACHED. IT IS IMPERMISSIBLE TO SUBDIVIDE A CONTRACT INTO SEPARATE CONTRACTS IN ORDER TO MEET THE REQUIREMENTS OF THIS SUBDIVISION.

6. THE JOB ORDER CONTRACT AND ALL SUBCONTRACTS ASSOCIATED WITH SUCH JOB ORDER CONTRACT MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER SUCH CONTRACTS IS PURSUANT TO SECTION TWO HUNDRED TWENTY OF THE LABOR LAW.

7. THESE REQUIREMENTS APPLY TO ALL JOB ORDER CONTRACTS ISSUED BY A STATE AGENCY, AS DEFINED BY SUBDIVISION THREE OF SECTION TWO-A OF THIS CHAPTER, A COVERED AUTHORITY, AS DEFINED BY SUBDIVISION SIX OF SECTION TWO-A OF THIS CHAPTER, THE NEW YORK CITY HOUSING AUTHORITY, ESTABLISHED UNDER TITLE ONE OF ARTICLE THIRTEEN OF THE PUBLIC HOUSING LAW, AND THE NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY, ESTABLISHED UNDER TITLE SIX OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW. ALL SUCH ENTITIES MUST LIMIT ASSIGNMENT UNDER CONTRACTS ISSUED PURSUANT TO THIS SECTION TO A MINORITY PORTION OF ITS ANNUAL CAPITAL BUDGET, IF SUCH BUDGET EXISTS.

8. IF AN ENTITY DESCRIBED IN SUBDIVISION SEVEN OF THIS SECTION SEEKS A THIRD PARTY CONSULTANT TO ASSIST, IN ANY MANNER, WITH THE BIDDING AND/OR

1 IMPLEMENTATION OF A JOB ORDER CONTRACT, SUCH THIRD PARTY CONSULTANT MUST
2 BE SELECTED PURSUANT TO A COMPETITIVE BID PROCESS.

3 S 3. The general municipal law is amended by adding a new section
4 103-h to read as follows:

5 S 103-H. JOB ORDER CONTRACTS. 1. "JOB ORDER CONTRACT", SHALL HAVE THE
6 SAME MEANING AS SET FORTH IN PARAGRAPH M OF SUBDIVISION FIVE OF SECTION
7 TWO HUNDRED TWENTY OF THE LABOR LAW.

8 2. THE JOB ORDER CONTRACT MUST HAVE A DEFINED SCOPE OF WORK, WHICH
9 INCLUDES:

10 A. A LIMITATION TO ONE OF THE GEOGRAPHIC REGIONS COMMONLY REFERRED TO
11 AS THE CAPITAL DISTRICT, MOHAWK VALLEY, CENTRAL NEW YORK, GENESEE
12 VALLEY, WESTERN NEW YORK, SOUTHERN TIER, NORTH COUNTRY, LONG ISLAND OR
13 NEW YORK CITY;

14 B. A DEFINED TRADE OF EITHER:

15 (I) BASIC TRADES, INCLUDING CARPENTERS, LABORERS AND BRICKLAYERS,

16 (II) PLUMBING AND GAS FITTING,

17 (III) STEAM HEATING, HOT WATER HEATING, VENTILATING AND AIR CONDITION-
18 ING APPARATUS,

19 (IV) ELECTRIC WIRING AND STANDARD ILLUMINATING FIXTURES,

20 (V) ROOFING,

21 (VI) WELDING,

22 (VII) IRONWORK,

23 (VIII) CONCRETE FINISHING, OR

24 (IX) PAINTING AND PLASTERING; AND

25 C. A DETAILED DESCRIPTION OF THE WORK TO BE PERFORMED UNDER THE BASE
26 CONTRACT, A LIST OF THE TASKS NECESSARY TO COMPLETE THE WORK TO BE
27 PERFORMED UNDER THE BASE CONTRACT AND THE TRADE CLASSIFICATIONS OF THE
28 WORKERS, MECHANICS AND LABORERS WHO WILL PERFORM EACH OF THE LISTED
29 TASKS IN THE BASE CONTRACT.

30 3. THE DEFINED SCOPE OF WORK TO BE PERFORMED UNDER THE BASE CONTRACT
31 MUST NOT BE OVERLY BROAD SO AS TO PREVENT THE CONTRACTOR FROM MAKING AN
32 INFORMED BID DURING THE COMPETITIVE BID PROCESS. THE CONTRACTING ENTITY
33 MUST LIMIT THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT TO THOSE
34 PRE-ESTABLISHED TASKS AND PRICES REFERRED TO IN THE GENERAL CONTRACT
35 CONDITIONS.

36 4. BEFORE SOLICITING BIDS FOR THE BASE CONTRACT, THE CONTRACTING ENTI-
37 TY SHALL FILE ALL INFORMATION REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH
38 A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW
39 WITH THE FISCAL OFFICER. THE CONTRACTING ENTITY MAY NOT SOLICIT BIDS FOR
40 THE BASE CONTRACT UNTIL ALL REQUIREMENTS OF SUBPARAGRAPH (I) OF PARA-
41 GRAPH A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE
42 LABOR LAW HAVE BEEN SATISFIED.

43 5. THE COST OF A JOB ORDER CONTRACT MAY NOT EXCEED FIVE HUNDRED THOU-
44 SAND DOLLARS. SUCH CONTRACT IS LIMITED TO ONE YEAR AND MAY BE RENEWED
45 FOR AN ADDITIONAL TWELVE MONTHS TWICE SO LONG AS THE FIVE HUNDRED THOU-
46 SAND DOLLAR THRESHOLD HAS NOT BEEN REACHED. IT IS IMPERMISSIBLE TO
47 SUBDIVIDE A CONTRACT INTO SEPARATE CONTRACTS IN ORDER TO MEET THE
48 REQUIREMENTS OF THIS SUBDIVISION.

49 6. THE JOB ORDER CONTRACT AND ALL SUBCONTRACTS ASSOCIATED WITH SUCH
50 JOB ORDER CONTRACT MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER
51 SUCH CONTRACTS IS PURSUANT TO SECTION TWO HUNDRED TWENTY OF THE LABOR
52 LAW.

53 7. THESE REQUIREMENTS APPLY TO ALL POLITICAL SUBDIVISIONS. ALL SUCH
54 POLITICAL SUBDIVISIONS MUST LIMIT ASSIGNMENTS UNDER CONTRACTS ISSUED
55 PURSUANT TO THIS SECTION TO A MINORITY PORTION OF ITS ANNUAL CAPITAL
56 BUDGET, IF SUCH BUDGET EXISTS.

1 8. IF A POLITICAL SUBDIVISION SEEKS A THIRD PARTY CONSULTANT TO
2 ASSIST, IN ANY MANNER, WITH THE BIDDING AND/OR IMPLEMENTATION OF A JOB
3 ORDER CONTRACT, SUCH THIRD PARTY CONSULTANT MUST BE SELECTED PURSUANT TO
4 A COMPETITIVE BID PROCESS.

5 S 4. This act shall take effect immediately and shall apply to all job
6 order contracts solicited or renewed on or after such effective date.