

731

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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:

1 Section 1. Paragraph (c) of subdivision 3 of section 220 of the labor
2 law, as separately amended by chapter 678 of the laws of 2007 and chap-
3 ter 7 of the laws of 2008, is amended to read as follows:
4 (c) It shall be the duty of the fiscal officer, as defined in this
5 section, to ascertain and determine the schedules of supplements to be
6 provided and wages to be paid workers, laborers and mechanics on such
7 public work, prior to the time of the advertisement for bids, and such
8 schedules shall be annexed to and form a part of the specifications for
9 the work. Such fiscal officer shall file with the department having
10 jurisdiction such schedules prior to the time of the commencement of the
11 advertisement for bids on all public works proposed to be constructed.
12 IF THE FISCAL OFFICER CANNOT ASCERTAIN OR DETERMINE SUCH SCHEDULES OR
13 WAGES, OR DISTINGUISH BETWEEN THE CLASSIFICATIONS OF WORKERS ON SUCH
14 PUBLIC WORK, IT SHALL BE THE DUTY OF THE FISCAL OFFICER TO REJECT ANY
15 CONTRACT ASSOCIATED WITH THE ADVERTISEMENT FOR BIDS. The term "contract"
16 as used in this article also shall include reconstruction and repair of
17 any such public work, and any public work performed under a lease,
18 permit or other agreement pursuant to which the department of jurisdic-
19 tion grants the responsibility of contracting for such public work to
20 any third party proposing to perform such work to which the provisions
21 of this article would apply had the department of jurisdiction
22 contracted directly for its performance, or where there is no lease,
23 permit or other agreement and ownership of a public work is intended to

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

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1 be assumed by such public entity at any time subsequent to completion of
2 the public work.

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

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

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

23 1. Except as otherwise expressly provided by an act of the legislature
24 or by a local law adopted prior to September first, nineteen hundred
25 fifty-three, all contracts for public work involving an expenditure of
26 more than thirty-five thousand dollars and all purchase contracts
27 involving an expenditure of more than twenty thousand dollars, shall be
28 awarded by the appropriate officer, board or agency of a political
29 subdivision or of any district therein including but not limited to a
30 soil conservation district, to the lowest responsible bidder furnishing
31 the required security after advertisement for sealed bids in the manner
32 provided by this section. ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK
33 CONTRACTS SHALL BE FOR A FIXED-DOLLAR AMOUNT. In any case where a
34 responsible bidder's gross price is reducible by an allowance for the
35 value of used machinery, equipment, apparatus or tools to be traded in
36 by a political subdivision, the gross price shall be reduced by the
37 amount of such allowance, for the purpose of determining the low bid. In
38 cases where two or more responsible bidders furnishing the required
39 security submit identical bids as to price, such officer, board or agen-
40 cy may award the contract to any of such bidders. Such officer, board or
41 agency may, in his or her or its discretion, reject all bids and read-
42 vertise for new bids in the manner provided by this section. In deter-
43 mining whether a purchase is an expenditure within the discretionary
44 threshold amounts established by this subdivision, the officer, board or
45 agency of a political subdivision or of any district therein shall
46 consider the reasonably expected aggregate amount of all purchases of
47 the same commodities, services or technology to be made within the
48 twelve-month period commencing on the date of purchase. Purchases of
49 commodities, services or technology shall not be artificially divided
50 for the purpose of satisfying the discretionary buying thresholds estab-
51 lished by this subdivision. A change to or a renewal of a discretionary
52 purchase shall not be permitted if the change or renewal would bring the
53 reasonably expected aggregate amount of all purchases of the same
54 commodities, services or technology from the same provider within the
55 twelve-month period commencing on the date of the first purchase to an
56 amount greater than the discretionary buying threshold amount. For

1 purposes of this section, "sealed bids", as that term applies to
2 purchase contracts, shall include bids submitted in an electronic format
3 including submission of the statement of non-collusion required by
4 section one hundred three-d of this article, provided that the governing
5 board of the political subdivision or district, by resolution, has
6 authorized the receipt of bids in such format. Submission in electronic
7 format may, for technology contracts only, be required as the sole meth-
8 od for the submission of bids. Bids submitted in an electronic format
9 shall be transmitted by bidders to the receiving device designated by
10 the political subdivision or district. Any method used to receive elec-
11 tronic bids shall comply with article three of the state technology law,
12 and any rules and regulations promulgated and guidelines developed ther-
13 eunder and, at a minimum, must (a) document the time and date of receipt
14 of each bid received electronically; (b) authenticate the identity of
15 the sender; (c) ensure the security of the information transmitted; and
16 (d) ensure the confidentiality of the bid until the time and date estab-
17 lished for the opening of bids. The timely submission of an electronic
18 bid in compliance with instructions provided for such submission in the
19 advertisement for bids and/or the specifications shall be the responsi-
20 bility solely of each bidder or prospective bidder. No political subdi-
21 vision or district therein shall incur any liability from delays of or
22 interruptions in the receiving device designated for the submission and
23 receipt of electronic bids.

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

27 1. Except as otherwise expressly provided by an act of the legislature
28 or by a local law adopted prior to September first, nineteen hundred
29 fifty-three, all contracts for public work involving an expenditure of
30 more than thirty-five thousand dollars and all purchase contracts
31 involving an expenditure of more than twenty thousand dollars, shall be
32 awarded by the appropriate officer, board or agency of a political
33 subdivision or of any district therein including but not limited to a
34 soil conservation district, to the lowest responsible bidder furnishing
35 the required security after advertisement for sealed bids in the manner
36 provided by this section. ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK
37 CONTRACTS SHALL BE FOR A FIXED-DOLLAR AMOUNT. In determining whether a
38 purchase is an expenditure within the discretionary threshold amounts
39 established by this subdivision, the officer, board or agency of a poli-
40 tical subdivision or of any district therein shall consider the reason-
41 ably expected aggregate amount of all purchases of the same commodities,
42 services or technology to be made within the twelve-month period
43 commencing on the date of purchase. Purchases of commodities, services
44 or technology shall not be artificially divided for the purpose of
45 satisfying the discretionary buying thresholds established by this
46 subdivision. A change to or a renewal of a discretionary purchase shall
47 not be permitted if the change or renewal would bring the reasonably
48 expected aggregate amount of all purchases of the same commodities,
49 services or technology from the same provider within the twelve-month
50 period commencing on the date of the first purchase to an amount greater
51 than the discretionary buying threshold amount. In any case where a
52 responsible bidder's gross price is reducible by an allowance for the
53 value of used machinery, equipment, apparatus or tools to be traded in
54 by a political subdivision, the gross price shall be reduced by the
55 amount of such allowance, for the purpose of determining the low bid. In
56 cases where two or more responsible bidders furnishing the required

1 security submit identical bids as to price, such officer, board or agen-
2 cy may award the contract to any of such bidders. Such officer, board or
3 agency may, in his, her or its discretion, reject all bids and readver-
4 tise for new bids in the manner provided by this section.

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

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

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

29 2. Advertisement for bids shall be published in the official newspaper
30 or newspapers, if any, or otherwise in a newspaper or newspapers desig-
31 nated for such purpose. Such advertisement shall contain a statement of
32 the time when and place where all bids received pursuant to such notice
33 will be publicly opened and read. SUCH ADVERTISEMENT SHALL DESCRIBE
34 SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE
35 PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDI-
36 VISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. Such board
37 or agency may by resolution designate any officer or employee to open
38 the bids at the time and place specified in the notice. Such designee
39 shall make a record of such bids in such form and detail as the board or
40 agency shall prescribe and present the same at the next regular or
41 special meeting of such board or agency. All bids received shall be
42 publicly opened and read at the time and place so specified. At least
43 five days shall elapse between the first publication of such advertise-
44 ment and the date so specified for the opening and reading of bids.

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

48 Such specifications must be so drawn as to permit separate and inde-
49 pendent bidding upon each of the above three subdivisions of work. All
50 contracts hereafter awarded by the state or a department, board, commis-
51 sioner or officer thereof, for the erection, construction or alteration
52 of buildings, or any part thereof, shall award the three subdivisions of
53 the above specified work separately to responsible and reliable persons,
54 firms or corporations engaged in these classes of work. A contract for
55 one or more buildings in any project shall be awarded to the lowest
56 responsible bidder for all the buildings included in the specifications.

1 ALL SUCH SPECIFICATIONS ISSUED PURSUANT TO THIS ARTICLE SHALL DESCRIBE
2 SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE
3 PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDI-
4 VISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. EACH BIDDER
5 FOR ANY PROJECT UNDER THIS ARTICLE SHALL SUBMIT BIDS FOR A FIXED-DOLLAR
6 AMOUNT.

7 S 8. Paragraphs a and d of subdivision 6 of section 2590-p of the
8 education law, paragraph a as added by chapter 738 of the laws of 1988
9 and paragraph d as amended by chapter 91 of the laws of 2002, are
10 amended to read as follows:

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

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

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

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

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

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

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

12 S 9. This act shall take effect on the ninetieth day after it shall
13 have become a law, provided however, that the amendments to paragraph
14 (c) of subdivision 3 of section 220 of the labor law made by section one
15 of this act shall be subject to the expiration and reversion of such
16 paragraph pursuant to chapter 678 of the laws of 2007, as amended, when
17 upon such date the provisions of section two of this act shall take
18 effect, provided further that the amendments to subdivision 1 of section
19 103 of the general municipal law made by section three of this act shall
20 be subject to the expiration and reversion of such subdivision pursuant
21 to subdivision (a) of section 41 of part X of chapter 62 of the laws of
22 2003, as amended, when upon such date the provisions of section four of
23 this act shall take effect, provided further, that the amendments to
24 subdivision 2 of section 103 of the general municipal law made by
25 section five of this act shall be subject to the expiration and rever-
26 sion of such subdivision pursuant to subdivision (a) of section 41 of
27 part X of chapter 62 of the laws of 2003, as amended, when upon such
28 date the provisions of section six of this act shall take effect;
29 provided, further, that the amendments to paragraph d of subdivision 6
30 of section 2590-p of the education law made by section eight of this act
31 shall not affect the repeal of such paragraph and shall be deemed
32 repealed therewith.