

2123

2011-2012 Regular Sessions

I N   A S S E M B L Y

January 13, 2011

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Introduced by M. of A. MILLMAN, DESTITO, PEOPLES-STOKES -- Multi-Sponsored by -- M. of A. CLARK, COOK, P. RIVERA, WEPRIN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to performance and payment bond requirements

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

1     Section 1. Subdivision 1 of section 137 of the state finance law, as  
2     separately amended by section 17 of part MM of chapter 57 and chapter  
3     619 of the laws of 2008, is amended to read as follows:  
4     1. In addition to other bond or bonds, if any, required by law for the  
5     completion of a work specified in a contract for the prosecution of a  
6     public improvement for the state of New York a municipal corporation, a  
7     public benefit corporation or a commission appointed pursuant to law, or  
8     in the absence of any such requirement, the comptroller may or the other  
9     appropriate official, respectively, shall nevertheless require prior to  
10    the approval of any such contract a bond guaranteeing prompt payment of  
11    moneys due to all persons furnishing labor or materials to the contrac-  
12    tor or any subcontractors in the prosecution of the work provided for in  
13    such contract. Whenever a municipal corporation issues a permit subject  
14    to compliance with section two hundred twenty of the labor law, such  
15    permittee or its contractor or subcontractors furnishing workers shall  
16    post a payment bond subject to this section. Provided, however, that all  
17    performance bonds and payment bonds may, at the discretion of the head  
18    of the state agency, public benefit corporation or commission, or his or  
19    her designee, be dispensed with for the completion of a work specified  
20    in a contract for the prosecution of a public improvement for the state  
21    of New York for which bids are solicited where the aggregate amount of  
22    the contract is under one hundred FIFTY thousand dollars and provided  
23    further, that in a case where the contract is not subject to the multi-  
24    ple contract award requirements of section one hundred thirty-five of

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

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1 this article, such requirements may be dispensed with where the head of  
2 the state agency, public benefit corporation or commission finds it to  
3 be in the public interest and where the aggregate amount of the contract  
4 awarded or to be awarded is less than [two] THREE hundred thousand  
5 dollars. THE HEAD OF THE STATE AGENCY, PUBLIC BENEFIT CORPORATION OR  
6 COMMISSION, OR HIS OR HER DESIGNEE, SHALL ADJUST THE AGGREGATE CONTRACT  
7 AMOUNTS LISTED IN THIS SUBDIVISION EVERY YEAR TO ACCOUNT FOR INCREASES  
8 IN THE COSTS OF CONSTRUCTION. ADVERTISEMENTS FOR BIDS SHALL PROVIDE  
9 INFORMATION ON THE REQUIREMENTS FOR, OR DISPENSATION OF, PERFORMANCE AND  
10 PAYMENT BONDS. Provided further, that in a case where a performance or  
11 payment bond is dispensed with, twenty per centum may be retained from  
12 each progress payment or estimate until the entire contract work has  
13 been completed and accepted, at which time the head of the state agency,  
14 public benefit corporation or commission shall, pending the payment of  
15 the final estimate, pay not to exceed seventy-five per centum of the  
16 amount of the retained percentage.

17 S 2. Subdivision 4 of section 139-f of the state finance law, as  
18 amended by chapter 83 of the laws of 1995, is amended to read as  
19 follows:

20 4. Notwithstanding any other provision of this section or other law,  
21 requirements for the furnishing of a performance bond or a payment bond  
22 may be dispensed with at the discretion of the head of the state agency  
23 or corporation, or his or her designee, where the public owner is a  
24 state agency or corporation described in subdivision one-a of this  
25 section and the aggregate amount of the contract awarded or to be  
26 awarded is under ONE HUNDRED fifty thousand dollars and, in a case where  
27 the contract is not subject to the multiple contract award requirements  
28 of section one hundred thirty-five of this article, such requirements  
29 may be dispensed with where the head of the state agency or corporation  
30 finds it to be in the public interest and where the aggregate amount of  
31 the contract awarded or to be awarded is under [two] THREE hundred thou-  
32 sand dollars. THE HEAD OF THE STATE AGENCY, PUBLIC BENEFIT CORPORATION  
33 OR COMMISSION, OR HIS OR HER DESIGNEE, SHALL ADJUST THE AGGREGATE  
34 CONTRACT AMOUNTS LISTED IN THIS SUBDIVISION EVERY YEAR TO ACCOUNT FOR  
35 INCREASES IN THE COSTS OF CONSTRUCTION. ADVERTISEMENTS FOR BIDS SHALL  
36 PROVIDE INFORMATION ON THE REQUIREMENTS FOR, OR DISPENSATION OF,  
37 PERFORMANCE AND PAYMENT BONDS. Provided further, that in a case where a  
38 performance or payment bond is dispensed with, twenty per centum may be  
39 retained from each progress payment or estimate until the entire  
40 contract work has been completed and accepted, at which time the head of  
41 the state agency or corporation shall, pending the payment of the final  
42 estimate, pay not to exceed seventy-five per centum of the amount of the  
43 retained percentage.

44 S 3. This act shall take effect immediately.