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

3258

2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. PERRY -- Multi-Sponsored by -- M. of A. CANESTRARI, COOK, GOTTFRIED, JACOBS, PHEFFER, J. RIVERA, ROBINSON, TOWNS -- read once and referred to the Committee on Labor

AN ACT to amend the general business law, in relation to a right of action for violation of statutes in bids on construction projects

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

Section 1. The general business law is amended by adding a new section 399-ff to read as follows:

S 399-FF. FAIRNESS IN COMPETITIVE BIDDING. 1. FOR THE PURPOSE OF THIS SECTION:

(A) THE TERM "PERSON" SHALL INCLUDE ANY INDIVIDUAL, FIRM, ASSOCIATION, PARTNERSHIP OR CORPORATION.

(B) THE TERM "CONSTRUCTION PROJECT" SHALL INCLUDE ANY PROJECT INVOLVING THE CONSTRUCTION, MODERNIZATION, IMPROVEMENT, REHABILITATION, REPAIR, MAINTENANCE, REPLACEMENT OR RENOVATION OF A BUILDING, ROAD OR STRUCTURE, OR ANY PORTION OF SUCH A PROJECT PERFORMED PURSUANT TO A SUBCONTRACTING ARRANGEMENT.

2. (A) ANY PERSON WHOSE COMPETITIVE BID FOR A CONSTRUCTION PROJECT HAS BEEN REJECTED AND INSTEAD AWARDED TO ANOTHER PERSON MAY BRING AN ACTION FOR DAMAGES IN A COURT OF COMPETENT JURISDICTION AGAINST THE WINNING BIDDER IF THE WINNING BIDDER HAS VIOLATED THE LABOR LAW OR THE WORKERS' COMPENSATION LAW BY FAILING TO PAY REQUIRED TAXES OR SECURE INSURANCE PURSUANT TO SUCH LAWS FOR ANY REASON INCLUDING MISCLASSIFYING ONE OR MORE OF ITS WORKERS OTHER THAN AN EMPLOYEE IN ITS BID COST.

(B) THE DETERMINATION WHETHER A WORKER ON A CONSTRUCTION PROJECT IS PROPERLY CLASSIFIED AS AN EMPLOYEE SHALL BE MADE IN ACCORDANCE WITH APPLICABLE STATE LAW.

3. (A) A PARTY UNSUCCESSFULLY BIDDING ON A CONSTRUCTION PROJECT WILL BE DEEMED TO HAVE SUFFERED AN INJURY BY VIRTUE OF NOT HAVING BEEN

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

LBD02550-01-1

AWARDED THE BID, REGARDLESS OF WHETHER THE WINNING BIDDER REALIZES A NET PROFIT ON THE PERFORMANCE OF THE CONTRACT.

(B) A WINNING BIDDER WHO IS A DEFENDANT IN AN ACTION BROUGHT PURSUANT TO THIS SECTION SHALL NOT BE LIABLE FOR DAMAGES IF HE ESTABLISHES, AS AN AFFIRMATIVE DEFENSE, THAT THE FAILURE TO COMPLY WITH STATE LAWS REQUIRING EMPLOYERS TO PAY STATE UNEMPLOYMENT INSURANCE OR SECURE WORKERS' COMPENSATION COVERAGE RESULTING FROM THE MISCLASSIFICATION OF AN EMPLOYEE AS OTHER THAN AN EMPLOYEE IF THE BID WAS NOT A KNOWING VIOLATION.

4. ANY PARTY WHO SUCCESSFULLY MAINTAINS AN ACTION UNDER THIS SECTION SHALL BE ENTITLED TO DAMAGES FROM THE WINNING BIDDER IN AN AMOUNT NOT LESS THAN TEN PERCENT OF THE AMOUNT OF THE SUCCESSFUL BID, OR SUCH GREATER AMOUNT AS SHALL BE DETERMINED BY THE COURT, AND IN ADDITION TO ANY OTHER DAMAGES AWARDED, SHALL BE ENTITLED TO THE PAYMENT OF ALL OF ITS COSTS AND REASONABLE ATTORNEYS' FEES IN BRINGING THE ACTION.

S 2. This act shall take effect immediately.