

3512

2011-2012 Regular Sessions

I N A S S E M B L Y

January 25, 2011

Introduced by M. of A. KAVANAGH, GALEF, KELLNER, ORTIZ, MOLINARO, DINOW-ITZ, ZEBROWSKI, BROOK-KRASNY, SCHIMEL -- Multi-Sponsored by -- M. of A. BRENNAN, CALHOUN, GIGLIO, JAFFEE, JEFFRIES, KOLB, LUPARDO, MAISEL, McDONOUGH, McENENY, SWEENEY, THIELE, TITONE -- read once and referred to the Committee on Ways and Means

AN ACT to amend the state finance law, in relation to the disqualification of tax delinquent bidders and certain exceptions

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

1 Section 1. The state finance law is amended by adding a new section
2 169 to read as follows:
3 S 169. DISQUALIFICATION OF TAX DELINQUENT BIDDERS. 1. SUBSEQUENT TO
4 RECEIVING BIDS AND PRIOR TO ENTERING INTO A CONTRACT WITH A BIDDER,
5 WHERE THAT BIDDER HAS OR WILL CONDUCT BUSINESS IN NEW YORK STATE, OR
6 PRIOR TO FORMALLY APPROVING A CONTRACT BETWEEN A BIDDER AND A SUBCON-
7 TRACTOR, EACH AGENCY, AS DEFINED IN SECTION NINETY-TWO OF THE PUBLIC
8 OFFICERS LAW, SHALL REVIEW THE LIST OF WARRANTS TRANSMITTED TO THE
9 DEPARTMENT OF STATE BY THE DEPARTMENT OF TAXATION AND FINANCE PURSUANT
10 TO SECTION SIX OF THE TAX LAW TO DETERMINE WHETHER THE BIDDER OR SUBCON-
11 TRACTOR HAS AN UNSATISFIED TAX WARRANT FILED AGAINST HIM OR HER WITH THE
12 DEPARTMENT OF STATE. NO AGENCY, AS DEFINED IN SECTION NINETY-TWO OF THE
13 PUBLIC OFFICERS LAW, SHALL BE PERMITTED TO ENTER INTO A CONTRACT WITH,
14 OR FORMALLY APPROVE A SUBCONTRACT TO, A BIDDER OR SUBCONTRACTOR WHO HAS
15 AN UNSATISFIED TAX WARRANT FILED AGAINST HIM OR HER PURSUANT TO SECTION
16 SIX OF THE TAX LAW.
17 2. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION,
18 A CONTRACT MAY BE ENTERED INTO WITH A BIDDER WHO HAS AN OUTSTANDING TAX
19 WARRANT IF:
20 A. THE AGENCY DETERMINES THAT AN EMERGENCY CONDITION EXISTS INVOLVING
21 DANGER TO THE LIFE, HEALTH, OR SAFETY OF ANY PERSON OR THE SAFETY OF ANY
22 STRUCTURE THAT REQUIRES IMMEDIATE ACTION AND THE NATURE OF THE WORK IS

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

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1 SUCH THAT IT WOULD BE IMPRACTICAL AND AGAINST THE PUBLIC INTEREST TO
2 HAVE PUBLIC LETTING OF THE CONTRACT, OR THE ITEM TO BE PURCHASED IS
3 ESSENTIAL TO THE EFFICIENT OPERATION OR THE ADEQUATE PROVISION OF
4 SERVICE AND AS A CONSEQUENCE OF AN EMERGENCY CONDITION SUCH PURCHASE
5 CANNOT AWAIT COMPETITIVE BIDDING; OR

6 B. THE ITEM TO BE PURCHASED IS AVAILABLE ONLY FROM A SINGLE SOURCE AND
7 THAT SOURCE IS THE BIDDER WITH THE OUTSTANDING TAX WARRANT; OR

8 C. THE BIDDER HAS DISCLOSED THE EXISTENCE OF THE TAX WARRANT PRIOR TO
9 OFFERING HIS OR HER BID, HAS PROVIDED THE AGENCY WITH PROOF SUFFICIENT
10 TO THE COMPTROLLER THAT THE BIDDER IS, IN GOOD FAITH, ATTEMPTING TO
11 SATISFY THE TAX WARRANT, AND/OR THE DEPARTMENT OF TAXATION AND FINANCE
12 HAS DECLARED THE OUTSTANDING TAX WARRANT TO BE DE MINIMIS IN NATURE AND
13 THUS DOES NOT WARRANT THE DISQUALIFICATION OF THE BIDDER.

14 3. FOR THE PURPOSES OF PARAGRAPH A OF SUBDIVISION TWO OF THIS SECTION,
15 THE TERM "EMERGENCY CONDITION" SHALL MEAN A CONDITION CAUSED BY A
16 NATURAL DISASTER, FIRE, OR OTHER CASUALTY, OR ANOTHER UNANTICIPATED,
17 SUDDEN, AND UNEXPECTED OCCURRENCE THAT REQUIRES THE IMMEDIATE ATTENTION
18 AND ACTION OF THE AGENCY.

19 4. PRIOR TO AWARDED A CONTRACT UNDER THE PROVISIONS OF PARAGRAPH A OF
20 SUBDIVISION TWO OF THIS SECTION, THE AGENCY SHALL NOTIFY THE COMPTROLLER
21 OF ITS INTENT TO AWARD THE CONTRACT AND SHALL SPECIFY THE REASONS USED
22 BY THE AGENCY TO MAKE THE REQUIRED DETERMINATIONS. THE COMPTROLLER
23 SHALL REVIEW THE DETERMINATIONS OF THE AGENCY AND IF, IN THE DETERMI-
24 NATION OF THE COMPTROLLER, THE REASONS SPECIFIED BY THE AGENCY DO NOT
25 SATISFY THE REQUIREMENTS OF PARAGRAPH A OF SUBDIVISION TWO OF THIS
26 SECTION, THE COMPTROLLER SHALL HAVE THE AUTHORITY TO DEEM THE AWARDED
27 CONTRACT NULL AND VOID AND UNENFORCEABLE AND TO REQUIRE THE AGENCY TO
28 USE THE COMPETITIVE BIDDING PROCESS FOR THE CONTRACT.

29 5. FOR PURPOSES OF PARAGRAPH C OF SUBDIVISION TWO OF THIS SECTION, THE
30 COMPTROLLER SHALL HAVE THE AUTHORITY TO MAKE A DETERMINATION OF WHETHER
31 PROOF SUFFICIENT EXISTS TO SATISFY THE TAX WARRANT.

32 S 2. This act shall take effect on the one hundred twentieth day after
33 it shall have become a law; provided that all state agencies, as defined
34 in paragraph (g) of subdivision 1 of section 73 of the public officers
35 law, are authorized to promulgate any and all rules and regulations and
36 take any other measures necessary to implement this act on its effective
37 date on or before such date.