

4500

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 3, 2011

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Introduced by M. of A. SCHROEDER -- read once and referred to the  
Committee on Labor

AN ACT to amend the labor law and the general municipal law, in relation  
to the definition of lowest responsible bidder and unfair labor prac-  
tices for purposes of public works projects

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

1     Section 1. The labor law is amended by adding a new section 201-g to  
2     read as follows:  
3     S 201-G. DETERMINATION OF LOWEST RESPONSIBLE BIDDER. 1. WHENEVER  
4     SELECTION OF THE LOWEST RESPONSIBLE BIDDER IS REQUIRED UNDER SECTION ONE  
5     HUNDRED THREE OF THE GENERAL MUNICIPAL LAW, A PERSON, FIRM, CORPORATION,  
6     SUCCESSOR CORPORATION, CONTRACTOR OR SUBCONTRACTOR SHALL NOT QUALIFY AS  
7     A RESPONSIBLE BIDDER IF IT HAS COMMITTED ANY OF THE FOLLOWING VIOLATIONS  
8     WITHIN A THREE YEAR PERIOD PRECEDING THE AWARD OF THE CONTRACT:  
9     (A) A VIOLATION OF ANY PROVISION OF ARTICLE EIGHT OF THIS CHAPTER;  
10    (B) A VIOLATION OF ANY STATE OR FEDERAL LABOR LAW INCLUDING BUT NOT  
11    LIMITED TO OCCUPATIONAL SAFETY AND HEALTH; WAGES; CHILD LABOR; WORKERS'  
12    COMPENSATION; UNEMPLOYMENT COMPENSATION; ORGANIZATIONAL RIGHTS; AND  
13    LABOR STANDARDS;  
14    (C) A VIOLATION OF ANY STATE OR FEDERAL LAW RELATING TO BID COLLUSION  
15    OR RESTRAINT OF TRADE;  
16    (D) A VIOLATION OF ANY STATE OR FEDERAL ENVIRONMENTAL LAW;  
17    (E) A CRIMINAL CONVICTION OF ANY STATE OR FEDERAL LAW FOR ANY CONDUCT  
18    RELATING TO BIDDING OR CONSTRUCTION-RELATED WORK BY THE BIDDER;  
19    (F) AN OUTSTANDING DISQUALIFICATION FROM BIDDING ON ANY PUBLIC WORK  
20    CONTRACT; OR  
21    (G) A VIOLATION OF ANY STATE OR FEDERAL CIVIL RIGHTS, EMPLOYMENT DISA-  
22    BILITY OR MINORITY PREFERENCE LAW.  
23    2. THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION SHALL NOT DIMIN-  
24    ISH THE DISCRETION OF THE AWARDING AUTHORITY TO DISQUALIFY A BIDDER ON

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

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1 OTHER GROUNDS WHICH THE AUTHORITY FINDS APPROPRIATE WHICH SHALL INCLUDE  
2 BUT NOT BE LIMITED TO:

3 (A) LACK OF SUFFICIENT EXPERTISE, PRIOR EXPERIENCE WITH COMPARABLE  
4 PROJECTS, OR SUFFICIENT RESOURCES TO PERFORM THE CONTRACT IN A TIMELY  
5 AND COMPETENT MANNER;

6 (B) WHETHER THE BIDDER'S EMPLOYEES ARE PROPERLY TRAINED AND WHETHER  
7 THE EQUIPMENT TO BE USED IS SAFE AND IN GOOD OPERATING CONDITION;

8 (C) WHETHER THE BIDDER HAS SUBMITTED A BID THAT IS MATHEMATICALLY OR  
9 MATERIALLY UNBALANCED;

10 (D) SUBMISSION OF A BID SO MUCH LOWER THAN THE AGENCY'S ENGINEER'S  
11 ESTIMATE THAT IT SEEMS UNLIKELY THAT THE BIDDER WILL BE ABLE TO PERFORM  
12 THE CONTRACT SATISFACTORILY AT THE PRICE BID; OR

13 (E) PRESENTATION OF ANY FALSE OR MISLEADING STATEMENTS TO THE AGENCY  
14 AWARDING THE CONTRACT IN CONNECTION WITH THE BID.

15 3. NO PERSON ACTING ON BEHALF OF A BIDDER SHALL LOBBY THE CONSTRUCTING  
16 GOVERNMENTAL ENTITY FOR THE PURPOSE OF ASSISTING SUCH BIDDER IN SECURING  
17 A BID. NO BID SHALL INCLUDE ANY COSTS ATTRIBUTABLE TO LOBBYING.

18 4. ANY PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION, LABOR ORGAN-  
19 IZATION, CONTRACTOR OR SUBCONTRACTOR MAY, WITHIN TEN DAYS AFTER A BID IS  
20 ACCEPTED, FILE AN APPLICATION TO CHALLENGE THE DETERMINATION UNDER  
21 SECTION ONE HUNDRED THREE OF THE GENERAL MUNICIPAL LAW THAT THE BIDDER  
22 CHOSEN WAS THE LOWEST RESPONSIBLE BIDDER. UPON RECEIPT OF SUCH APPLICA-  
23 TION, THE COMMISSIONER OR CHIEF EXECUTIVE OFFICER OF THE PUBLIC ENTITY  
24 SHALL CONDUCT A HEARING TO DETERMINE THE VALIDITY OF THE APPLICATION.  
25 NOTICE SHALL BE GIVEN TO THE APPLICANT AND TO THE PROPOSED LOWEST  
26 RESPONSIBLE BIDDER OF THE DATE, TIME AND PLACE OF THE HEARING. THE  
27 APPLICANT AND THE PROPOSED LOWEST RESPONSIBLE BIDDER SHALL BE GIVEN THE  
28 OPPORTUNITY TO PRESENT EVIDENCE AND WITNESSES ON THEIR BEHALF. THE  
29 COMMISSIONER OR CHIEF EXECUTIVE OFFICER PRESIDING OVER SUCH HEARING  
30 SHALL ISSUE A WRITTEN DECISION WITH FINDINGS OF FACT WHETHER THE  
31 PROPOSED LOWEST RESPONSIBLE BIDDER IS RESPONSIBLE. SUCH CONTRACT SHALL  
32 NOT BE AWARDED PRIOR TO SUCH DECISION. THE AWARDING AUTHORITY SHALL  
33 NOTIFY ALL BIDDERS REGARDING THE SELECTION OF ITS PROPOSED LOWEST  
34 RESPONSIBLE BIDDER.

35 S 2. Subdivision 1 of section 103 of the general municipal law, as  
36 amended by section 1 of part FF of chapter 56 of the laws of 2010, is  
37 amended to read as follows:

38 1. Except as otherwise expressly provided by an act of the legislature  
39 or by a local law adopted prior to September first, nineteen hundred  
40 fifty-three, all contracts for public work involving an expenditure of  
41 more than thirty-five thousand dollars and all purchase contracts  
42 involving an expenditure of more than twenty thousand dollars, shall be  
43 awarded by the appropriate officer, board or agency of a political  
44 subdivision or of any district therein including but not limited to a  
45 soil conservation district, to the lowest responsible bidder furnishing  
46 the required security after advertisement for sealed bids in the manner  
47 provided by this section. In any case where a responsible bidder's gross  
48 price is reducible by an allowance for the value of used machinery,  
49 equipment, apparatus or tools to be traded in by a political subdivi-  
50 sion, the gross price shall be reduced by the amount of such allowance,  
51 for the purpose of determining the low bid. In cases where two or more  
52 responsible bidders furnishing the required security submit identical  
53 bids as to price, such officer, board or agency may award the contract  
54 to any of such bidders. Such officer, board or agency may, in his or her  
55 or its discretion, reject all bids and readvertise for new bids in the  
56 manner provided by this section. In determining whether a purchase is an

1 expenditure within the discretionary threshold amounts established by  
2 this subdivision, the officer, board or agency of a political subdivi-  
3 sion or of any district therein shall consider the reasonably expected  
4 aggregate amount of all purchases of the same commodities, services or  
5 technology to be made within the twelve-month period commencing on the  
6 date of purchase. Purchases of commodities, services or technology  
7 shall not be artificially divided for the purpose of satisfying the  
8 discretionary buying thresholds established by this subdivision. A  
9 change to or a renewal of a discretionary purchase shall not be permit-  
10 ted if the change or renewal would bring the reasonably expected aggre-  
11 gate amount of all purchases of the same commodities, services or tech-  
12 nology from the same provider within the twelve-month period commencing  
13 on the date of the first purchase to an amount greater than the discre-  
14 tionary buying threshold amount. For purposes of this section, "sealed  
15 bids", as that term applies to purchase contracts, shall include bids  
16 submitted in an electronic format including submission of the statement  
17 of non-collusion required by section one hundred three-d of this arti-  
18 cle, provided that the governing board of the political subdivision or  
19 district, by resolution, has authorized the receipt of bids in such  
20 format. Submission in electronic format may, for technology contracts  
21 only, be required as the sole method for the submission of bids. Bids  
22 submitted in an electronic format shall be transmitted by bidders to the  
23 receiving device designated by the political subdivision or district.  
24 Any method used to receive electronic bids shall comply with article  
25 three of the state technology law, and any rules and regulations promul-  
26 gated and guidelines developed thereunder and, at a minimum, must (a)  
27 document the time and date of receipt of each bid received electron-  
28 ically; (b) authenticate the identity of the sender; (c) ensure the  
29 security of the information transmitted; and (d) ensure the confiden-  
30 tiality of the bid until the time and date established for the opening  
31 of bids. The timely submission of an electronic bid in compliance with  
32 instructions provided for such submission in the advertisement for bids  
33 and/or the specifications shall be the responsibility solely of each  
34 bidder or prospective bidder. No political subdivision or district ther-  
35 ein shall incur any liability from delays of or interruptions in the  
36 receiving device designated for the submission and receipt of electronic  
37 bids. FOR PURPOSES OF THIS SECTION, THE TERM "LOWEST RESPONSIBLE  
38 BIDDER" SHALL MEAN ANY PERSON, FIRM, CORPORATION, SUCCESSOR CORPORATION,  
39 CONTRACTOR OR SUBCONTRACTOR WHO (I) SUBMITS THE LOWEST BID FOR A PUBLIC  
40 WORK CONTRACT AND (II) IS NOT DISQUALIFIED ON GROUNDS PROVIDED IN  
41 SECTION TWO HUNDRED ONE-G OF THE LABOR LAW.

42 S 3. Subdivision 1 of section 103 of the general municipal law, as  
43 amended by section 2 of part FF of chapter 56 of the laws of 2010, is  
44 amended to read as follows:

45 1. Except as otherwise expressly provided by an act of the legislature  
46 or by a local law adopted prior to September first, nineteen hundred  
47 fifty-three, all contracts for public work involving an expenditure of  
48 more than thirty-five thousand dollars and all purchase contracts  
49 involving an expenditure of more than twenty thousand dollars, shall be  
50 awarded by the appropriate officer, board or agency of a political  
51 subdivision or of any district therein including but not limited to a  
52 soil conservation district, to the lowest responsible bidder furnishing  
53 the required security after advertisement for sealed bids in the manner  
54 provided by this section. In determining whether a purchase is an  
55 expenditure within the discretionary threshold amounts established by  
56 this subdivision, the officer, board or agency of a political subdivi-

1 sion or of any district therein shall consider the reasonably expected  
2 aggregate amount of all purchases of the same commodities, services or  
3 technology to be made within the twelve-month period commencing on the  
4 date of purchase. Purchases of commodities, services or technology shall  
5 not be artificially divided for the purpose of satisfying the discre-  
6 tionary buying thresholds established by this subdivision. A change to  
7 or a renewal of a discretionary purchase shall not be permitted if the  
8 change or renewal would bring the reasonably expected aggregate amount  
9 of all purchases of the same commodities, services or technology from  
10 the same provider within the twelve-month period commencing on the date  
11 of the first purchase to an amount greater than the discretionary buying  
12 threshold amount. In any case where a responsible bidder's gross price  
13 is reducible by an allowance for the value of used machinery, equipment,  
14 apparatus or tools to be traded in by a political subdivision, the gross  
15 price shall be reduced by the amount of such allowance, for the purpose  
16 of determining the low bid. In cases where two or more responsible  
17 bidders furnishing the required security submit identical bids as to  
18 price, such officer, board or agency may award the contract to any of  
19 such bidders. Such officer, board or agency may, in his, her or its  
20 discretion, reject all bids and readvertise for new bids in the manner  
21 provided by this section. FOR PURPOSES OF THIS SECTION, THE TERM  
22 "LOWEST RESPONSIBLE BIDDER" SHALL MEAN ANY PERSON, FIRM, CORPORATION,  
23 SUCCESSOR CORPORATION, CONTRACTOR OR SUBCONTRACTOR WHO (A) SUBMITS THE  
24 LOWEST BID FOR A PUBLIC WORK CONTRACT AND (B) IS NOT DISQUALIFIED ON  
25 GROUNDS PROVIDED IN SECTION TWO HUNDRED ONE-G OF THE LABOR LAW.

26 S 4. This act shall take effect on the first of September next  
27 succeeding the date on which it shall have become a law; provided that  
28 the amendments to subdivision 1 of section 103 of the general municipal  
29 law made by section two of this act shall be subject to the expiration  
30 and reversion of such subdivision pursuant to section 41 of part X of  
31 chapter 62 of the laws of 2003, as amended, when upon such date the  
32 provisions of section three of this act shall take effect.