

7855

2011-2012 Regular Sessions

I N A S S E M B L Y

May 19, 2011

Introduced by M. of A. SCHIMMINGER -- read once and referred to the
Committee on Local Governments

AN ACT to amend the general municipal law, the state finance law, and
the labor law, in relation to project labor agreements for public work
projects

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

1 Section 1. This act shall be known and may be cited as the "public
2 construction savings act".
3 S 2. Subdivision 1 of section 103 of the general municipal law, as
4 amended by section 1 of part FF of chapter 56 of the laws of 2010, is
5 amended to read as follows:
6 1. Except as otherwise expressly provided by an act of the legislature
7 or by a local law adopted prior to September first, nineteen hundred
8 fifty-three, all contracts for public work involving an expenditure of
9 more than thirty-five thousand dollars and all purchase contracts
10 involving an expenditure of more than twenty thousand dollars, shall be
11 awarded by the appropriate officer, board or agency of a political
12 subdivision or of any district therein including but not limited to a
13 soil conservation district, to the lowest responsible bidder furnishing
14 the required security after advertisement for sealed bids in the manner
15 provided by this section. In any case where a responsible bidder's gross
16 price is reducible by an allowance for the value of used machinery,
17 equipment, apparatus or tools to be traded in by a political subdivi-
18 sion, the gross price shall be reduced by the amount of such allowance,
19 for the purpose of determining the low bid. In cases where two or more
20 responsible bidders furnishing the required security submit identical
21 bids as to price, such officer, board or agency may award the contract
22 to any of such bidders. Such officer, board or agency may, in his or her
23 or its discretion, reject all bids and readvertise for new bids in the
24 manner provided by this section. In determining whether a purchase is an

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

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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. A CONTRACTOR BIDDING ON A REQUEST FOR PROPOSAL ISSUED BY THE
38 APPROPRIATE OFFICER, BOARD OR AGENCY OF A POLITICAL SUBDIVISION OR OF
39 ANY DISTRICT THEREIN, INCLUDING BUT NOT LIMITED TO A SOIL CONSERVATION
40 DISTRICT, OFFERING AN OPTIONAL PROJECT LABOR AGREEMENT PURSUANT TO PARA-
41 GRAPH (A) OF SUBDIVISION TWO OF SECTION TWO HUNDRED TWENTY-TWO OF THE
42 LABOR LAW, MAY SUBMIT A BID THAT DOES NOT INCLUDE A PROJECT LABOR AGREE-
43 MENT, AND SUCH CONTRACT FOR PUBLIC WORK SHALL BE AWARDED TO THE CONTRAC-
44 TOR WITH THE LOW BID REGARDLESS OF WHETHER A PROJECT LABOR AGREEMENT WAS
45 INCLUDED IN A CONTRACTOR'S BID PROPOSAL.

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

49 1. Except as otherwise expressly provided by an act of the legislature
50 or by a local law adopted prior to September first, nineteen hundred
51 fifty-three, all contracts for public work involving an expenditure of
52 more than thirty-five thousand dollars and all purchase contracts
53 involving an expenditure of more than twenty thousand dollars, shall be
54 awarded by the appropriate officer, board or agency of a political
55 subdivision or of any district therein including but not limited to a
56 soil conservation district, to the lowest responsible bidder furnishing

1 the required security after advertisement for sealed bids in the manner
2 provided by this section. In determining whether a purchase is an
3 expenditure within the discretionary threshold amounts established by
4 this subdivision, the officer, board or agency of a political subdivi-
5 sion or of any district therein shall consider the reasonably expected
6 aggregate amount of all purchases of the same commodities, services or
7 technology to be made within the twelve-month period commencing on the
8 date of purchase. Purchases of commodities, services or technology shall
9 not be artificially divided for the purpose of satisfying the discre-
10 tionary buying thresholds established by this subdivision. A change to
11 or a renewal of a discretionary purchase shall not be permitted if the
12 change or renewal would bring the reasonably expected aggregate amount
13 of all purchases of the same commodities, services or technology from
14 the same provider within the twelve-month period commencing on the date
15 of the first purchase to an amount greater than the discretionary buying
16 threshold amount. In any case where a responsible bidder's gross price
17 is reducible by an allowance for the value of used machinery, equipment,
18 apparatus or tools to be traded in by a political subdivision, the gross
19 price shall be reduced by the amount of such allowance, for the purpose
20 of determining the low bid. In cases where two or more responsible
21 bidders furnishing the required security submit identical bids as to
22 price, such officer, board or agency may award the contract to any of
23 such bidders. Such officer, board or agency may, in his, her or its
24 discretion, reject all bids and readvertise for new bids in the manner
25 provided by this section. A CONTRACTOR BIDDING ON A REQUEST FOR
26 PROPOSAL ISSUED BY THE APPROPRIATE OFFICER, BOARD OR AGENCY OF A POLI-
27 TICAL SUBDIVISION OR OF ANY DISTRICT THEREIN, INCLUDING BUT NOT LIMITED
28 TO A SOIL CONSERVATION DISTRICT, OFFERING AN OPTIONAL PROJECT LABOR
29 AGREEMENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWO
30 HUNDRED TWENTY-TWO OF THE LABOR LAW, MAY SUBMIT A BID THAT DOES NOT
31 INCLUDE A PROJECT LABOR AGREEMENT, AND SUCH CONTRACT FOR PUBLIC WORK
32 SHALL BE AWARDED TO THE CONTRACTOR WITH THE LOW BID REGARDLESS OF WHETH-
33 ER A PROJECT LABOR AGREEMENT WAS INCLUDED IN A CONTRACTOR'S BID
34 PROPOSAL.

35 S 4. The state finance law is amended by adding a new section 148 to
36 read as follows:

37 S 148. PROJECT LABOR AGREEMENTS. A CONTRACTOR BIDDING ON A REQUEST
38 FOR PROPOSAL ISSUED BY AN OFFICER, BOARD, DEPARTMENT, COMMISSION OR
39 COMMISSIONS FOR THE ERECTION, CONSTRUCTION OR ALTERATION OF BUILDINGS
40 FOR THE STATE, OFFERING AN OPTIONAL PROJECT LABOR AGREEMENT PURSUANT TO
41 PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWO HUNDRED TWENTY-TWO OF
42 THE LABOR LAW, MAY SUBMIT A BID THAT DOES NOT INCLUDE A PROJECT LABOR
43 AGREEMENT AND SUCH CONTRACT FOR PUBLIC WORK SHALL BE AWARDED TO THE
44 CONTRACTOR WITH THE LOW BID REGARDLESS OF WHETHER A PROJECT LABOR AGREE-
45 MENT WAS INCLUDED IN A CONTRACTOR'S BID PROPOSAL.

46 S 5. Paragraph (a) of subdivision 2 of section 222 of the labor law,
47 as added by section 18 of part MM of chapter 57 of the laws of 2008, is
48 amended to read as follows:

49 (a) Any agency, board, department, commission or officer of the state
50 of New York, or of any political subdivision thereof as defined in
51 section one hundred of the general municipal law, municipal corporation
52 as defined in section sixty-six of the general construction law, public
53 benefit corporation, or local or state authority as defined in section
54 two of the public authorities law having jurisdiction over the public
55 work may NOT require[a contractor awarded a contract, subcontract,
56 lease, grant, bond, covenant or other agreement for a project to enter

1 into], BUT MAY OFFER AS AN OPTION, PARTICIPATION IN a project labor
2 agreement [during and for the work involved with such project when such
3 requirement is], AND SHALL NOTIFY EACH CONTRACTOR OF THE OPTION TO
4 INCLUDE OR NOT INCLUDE PARTICIPATION IN A PROJECT LABOR AGREEMENT WITH
5 ITS BID, AS part of the agency, board, department, commission or officer
6 of the state of New York, political subdivision, municipal corporation,
7 public benefit corporation or local or state authority having jurisdic-
8 tion over the public work request for proposals for the project and when
9 the agency, board, department, commission or officer of the state of New
10 York, political subdivision, municipal corporation, public benefit
11 corporation or local or state authority having jurisdiction over the
12 public work determines that its interest in obtaining the best work at
13 the lowest possible price, preventing favoritism, fraud and corruption,
14 and other considerations such as the impact of delay, the possibility of
15 cost savings advantages, and any local history of labor unrest, are best
16 met by requiring a project labor agreement, BUT SHALL IN ANY EVENT
17 AWARD THE SUBCONTRACT, LEASE, CONTRACT, GRANT, BOND, COVENANT OR OTHER
18 AGREEMENT FOR A PROJECT TO THE CONTRACTOR WITH THE LOW BID REGARDLESS OF
19 WHETHER A PROJECT LABOR AGREEMENT WAS INCLUDED IN THE CONTRACTOR'S BID
20 PROPOSAL.

21 S 6. This act shall take effect on the sixtieth day after it shall
22 have become a law, and shall control all contracts advertised or solici-
23 ted for bid on or after the effective date of this act under the
24 provisions of any law requiring contracts to be let pursuant to
25 provisions of law amended by this act; provided, however that the amend-
26 ments to subdivision 1 of section 103 of the general municipal law made
27 by section two of this act shall be subject to the expiration and rever-
28 sion of such subdivision pursuant to subdivision (a) of section 41 of
29 part X of chapter 62 of the laws of 2003, as amended, when upon such
30 date the provisions of section three of this act shall take effect.