

7855

2011-2012 Regular Sessions

I N   A S S E M B L Y

May 19, 2011

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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.