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

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2011-2012 Regular Sessions

I N A S S E M B L Y

May 25, 2011

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

AN ACT to enact the "fire district public construction flexibility demonstration project act" to facilitate expedition of the fire district renovation projects

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

Section 1. Short title. This act shall be known and may be cited as the "fire district public construction flexibility demonstration project act".

S 2. Definitions. For the purposes of this act the terms:

1. "Fire district" shall mean any fire district in New York state.

2. "Project" shall mean the building projects approved by the voters of a fire district to reconstruct various fire district buildings, including infrastructure improvements necessary to meet the district's needs and site work, and acquire original furnishings, equipment, machinery or apparatus within the fire district.

S 3. Notwithstanding any other provision of law to the contrary, all contracts awarded or entered into by the fire district for design or construction of fire building facilities included in the project shall be governed by section four of this act and not section 101 of the general municipal law.

S 4. 1. The fire district may award or enter into contracts for the design or construction, of fire building facilities for the respective fire district pursuant to a single general contract. In the event the fire district elects to utilize a single general contract, the fire district shall require:

(a) that notice of the invitation for bids for contracts state the time and place of the receipt and opening of bids; and

(b) that bidders submit to the fire district prior to the opening of a bid for the award of a contract pursuant to this section, a sealed list

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

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identifying the names of each subcontractor each contractor proposes to utilize under the contract for the performance of the following subdivisions of work:

(i) plumbing and gas fittings;

(ii) steam heating, hot water heating, ventilating and air conditioning apparatus; and

(iii) electrical wiring and standard illuminating fixtures.

2. The low bidder shall specify in such list the estimated value to be paid each subcontractor for the work to be performed by such subcontractor. After the fire district has announced the low bidder at the bid opening, the fire district shall open any such low bidder's separate sealed list and shall read aloud such subcontractors listed therein. All such sealed lists except those of the low bidder shall be returned unopened to their respective contractors following award of a contract.

3. The fire district shall provide in its construction or erection contracts awarded as part of the project a provision requiring each contractor to make prompt payment to its subcontractors performing each subdivision of work listed in paragraph (b) of subdivision one of this section. Within seven calendar days of the receipt of any payment from the fire district, the contractor shall pay to each subcontractor that portion of the proceeds of such payment representing the value of the work performed by such subcontractor, based upon the actual value of the subcontract, which has been approved and paid for by the fire district, less an amount necessary to satisfy any claims, liens or judgments against the subcontractor which have not been suitably discharged and less any amount retained by the contractor as provided in this subdivision.

4. For such purpose, the subcontract may provide that the contractor may retain not more than five per centum of each payment to the subcontractor or not more than ten per centum of each such payment if prior to entering into the subcontract the subcontractor is unable or unwilling to provide, at the request of the contractor, a performance bond and a labor and material bond both in the amount of the subcontract.

5. At the time of making a payment to the contractor for work performed by the subcontractors set forth in paragraph (b) of subdivision one of this section, the fire district shall file in its office for review a record of such payment. If any such subcontractor shall notify the fire district and the contractor in writing that the contractor has failed to make a payment to it as provided in this section and the contractor shall fail, within five calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the subcontractor is in dispute, the fire district shall withhold from amounts then or thereafter becoming due and payable to the contractor, other than from amounts becoming due and payable to the contractor representing the value of work approved by the fire district and performed by other subcontractors and which the contractor is required to pay to such subcontractor within seven calendar days as provided in this subdivision, an amount equal to that portion of the fire district's prior payment to the contractor which the subcontractor claims to be due it, shall remit the amount so withheld to the subcontractor and deduct such payment from the amounts then otherwise due and payable to the contractor, which payment shall as between the contractor and the fire district, be deemed a payment by the fire district to the contractor. In the event the contractor shall notify the fire district that the claim of the subcontractor is in dispute, the fire district shall withhold from amounts then or thereafter becoming due and payable

to the contractor, other than from amounts becoming due and payable to the contractor representing the value of work approved by the fire district and performed by other subcontractors and which the contractor is required to pay to such subcontractors within seven calendar days, an amount equal to that portion of the fire district's prior payment to the contractor which the subcontractor claims to be due it and deposit such amount so withheld in a separate interest-bearing account pending resolution of the dispute, and the amount so deposited together with the interest thereon shall be paid to the party or parties ultimately determined to be entitled thereto, or until the contractor and subcontractor shall otherwise agree as to the disposition thereof. In the event the fire district shall be required to withhold amounts from a contractor for the benefit of more than one subcontractor, the amounts so withheld shall be applied to or for such subcontractors in the order in which the written notices of nonpayment have been received by the fire district, and if more than one such notice was received on the same day, proportionately based upon the amount of the subcontractor claims received on such day.

6. Payment to a subcontractor shall not relieve the contractor from responsibility for the work covered by the payment. Nothing contained in this act shall be construed to create any obligation on the part of the fire district to pay any subcontractor, nor shall anything provided in this act serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor and the fire district.

7. The provisions of this section shall not be applicable to the subcontractors of a contractor whose contract is limited to the performance of a single subdivision of work listed in paragraph (b) of subdivision one of this section.

S 5. Nothing contained in this act shall prevent the fire district from commencing an interpleader action to determine entitlement to a disputed payment in accordance with section 1006 of the civil practice law and rules, or any successor provision thereto.

S 6. This act shall take effect immediately.