

3012

2011-2012 Regular Sessions

I N S E N A T E

February 7, 2011

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law and the general municipal law, in relation to requirements for selecting the lowest responsible bidder for certain public works contracts

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  
2 135-b to read as follows:  
3 S 135-B. LOWEST RESPONSIBLE BIDDER. 1. DEFINITION. FOR THE PURPOSES OF  
4 THIS SECTION, "LOWEST RESPONSIBLE BIDDER" SHALL MEAN THE PERSON, FIRM,  
5 CORPORATION, CONTRACTOR OR SUBCONTRACTOR OR OTHER ENTITY SUBMITTING A  
6 BID FOR A PUBLIC WORK CONTRACT FOR THE ERECTION, CONSTRUCTION, RECON-  
7 STRUCTION OR ALTERATION OF BUILDINGS WHO:  
8 A. SUBMITS THE LOWEST BID; AND  
9 B. IS NOT DISQUALIFIED ON ANY OF THE GROUNDS LISTED UNDER SUBDIVISION  
10 SIX OF THIS SECTION.  
11 2. USE OF QUESTIONNAIRE TO DETERMINE RESPONSIBILITY OF CONTRACTORS AND  
12 SUBCONTRACTORS. A. NO PUBLIC WORK CONTRACT IN AN AMOUNT EXCEEDING ONE  
13 HUNDRED THOUSAND DOLLARS MAY BE AWARDED BY AN AGENCY, DEPARTMENT, PUBLIC  
14 AUTHORITY OR PUBLIC BENEFIT CORPORATION, OFFICE OR OTHER ENTITY OF THE  
15 STATE, TO THE LOWEST RESPONSIBLE BIDDER UNLESS EACH CONTRACTOR AND  
16 SUBCONTRACTOR FOR THE CONTRACT SUBMITS, AND THE CONTRACTING ENTITY  
17 REVIEWS, A QUESTIONNAIRE DEMONSTRATING ITS RESPONSIBILITY TO PERFORM THE  
18 CONTRACT.  
19 B. QUESTIONNAIRES MUST BE SUBMITTED ELECTRONICALLY TO THE CONTRACTING  
20 ENTITY AND TO THE COMPTROLLER WHO SHALL MAINTAIN THE INFORMATION IN AN  
21 ELECTRONIC DATABASE FOR REVIEW BY ANY STATE OR LOCAL CONTRACTING ENTITY  
22 THAT AWARDS PUBLIC WORK CONTRACTS.  
23 3. CONTENTS OF QUESTIONNAIRE. THE COMPTROLLER SHALL PREPARE A UNIFORM  
24 QUESTIONNAIRE FOR USE BY STATE AND LOCAL CONTRACTING ENTITIES, WHICH

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

LBD06860-02-1

1 SHALL REQUIRE EACH CONTRACTOR AND SUBCONTRACTOR TO PROVIDE THE FOLLOWING  
2 INFORMATION:

3 A. THE NAME, ADDRESS AND TELEPHONE NUMBER OF ITS PRINCIPALS, OWNERS,  
4 OFFICERS, SHAREHOLDERS WHO OWN OR CONTROL AT LEAST FIVE PERCENT OF THE  
5 STOCK OF THE CONTRACTOR OR SUBCONTRACTOR, PARENT COMPANY AND SUBSID-  
6 IARIES. FOR PURPOSES OF THIS SECTION, THE TERM "AFFILIATES" SHALL  
7 INCLUDE EACH OF THE INDIVIDUALS AND ENTITIES LISTED IN THIS PARAGRAPH;

8 B. THE TAXPAYER IDENTIFICATION NUMBER OR EMPLOYER IDENTIFICATION  
9 NUMBER, AND THE DUN AND BRADSTREET NUMBER;

10 C. THE TYPE OF BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO CORPO-  
11 RATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, LIMITED PARTNERSHIP,  
12 JOINT VENTURE OR SOLE PROPRIETOR;

13 D. THE NAMES AND ADDRESSES OF THE SUBCONTRACTORS PLANNED FOR THE  
14 PROJECT;

15 E. THE USE OF REGISTERED AND APPROVED APPRENTICESHIP TRAINING PROGRAMS  
16 FOR THE PAST FIVE YEARS;

17 F. ANY VIOLATIONS OF THE PREVAILING WAGE LAW UNDER ARTICLE EIGHT OF  
18 THE LABOR LAW OR THE FEDERAL DAVIS-BACON ACT BY THE CONTRACTOR OR  
19 SUBCONTRACTOR AND ITS AFFILIATES;

20 G. ANY VIOLATIONS OF STATE OR FEDERAL LAWS RELATING TO UNEMPLOYMENT  
21 COMPENSATION, WORKERS' COMPENSATION, OCCUPATIONAL HEALTH AND SAFETY,  
22 EMPLOYEE MISCLASSIFICATION, EMPLOYMENT DISABILITY, EMPLOYMENT DISCRIMI-  
23 NATION, OR OTHER LABOR LAWS BY THE CONTRACTOR OR SUBCONTRACTOR AND ITS  
24 AFFILIATES;

25 H. ANY VIOLATIONS OF STATE OR FEDERAL ENVIRONMENTAL PROTECTION LAWS BY  
26 THE CONTRACTOR OR SUBCONTRACTOR AND ITS AFFILIATES;

27 I. ANY FAILURE TO FILE FEDERAL, STATE OR LOCAL TAX RETURNS, ANY TAX  
28 LIABILITIES, JUDGMENTS OR LIENS, AND VIOLATIONS OF AGREEMENTS OR LAWS  
29 UNDER WHICH A TAX CREDIT, TAX EXEMPTION, LOAN OR GRANT WAS AWARDED BY  
30 ANY FEDERAL, STATE OR LOCAL ENTITY BY THE CONTRACTOR OR SUBCONTRACTOR  
31 AND ITS AFFILIATES;

32 J. ANY CRIMINAL CONVICTION, INDICTMENT, GRANT OF IMMUNITY OR CIVIL  
33 VIOLATION FOR BUSINESS-RELATED ACTIVITY, INCLUDING BUT NOT LIMITED TO  
34 BRIBERY, EXTORTION, FRAUD, RACKETEERING, CONTRACT BIDDING AND RESTRAINT  
35 OF TRADE BY THE CONTRACTOR OR SUBCONTRACTOR AND ITS AFFILIATES;

36 K. CONTRACT SANCTION HISTORY INCLUDING FEDERAL OR STATE DEBARMENTS,  
37 SUSPENSIONS, FINDINGS OF INELIGIBILITY, OR DISQUALIFICATIONS FOR  
38 NON-COMPLIANCE WITH MINORITY-OWNED, WOMEN-OWNED OR DISADVANTAGED-OWNED  
39 BUSINESS REQUIREMENTS BY THE CONTRACTOR OR SUBCONTRACTOR AND ITS AFFIL-  
40 IATES;

41 L. ANY PENDING INVESTIGATIONS FOR CRIMINAL OR CIVIL VIOLATIONS OF ANY  
42 STATE OR FEDERAL LAWS BY THE CONTRACTOR OR SUBCONTRACTOR AND ITS AFFIL-  
43 IATES;

44 M. PROFESSIONAL LICENSE SANCTION HISTORY AGAINST THE CONTRACTOR OR  
45 SUBCONTRACTOR AND ITS AFFILIATES;

46 N. EXPERTISE AND EXPERIENCE PERFORMING THE TYPE OF WORK REQUIRED UNDER  
47 THE CONTRACT;

48 O. FINANCIAL CAPABILITY AND RELIABILITY INCLUDING FISCAL RESOURCES TO  
49 PERFORM THE CONTRACT, AND ANY BANKRUPTCIES WITHIN THE PAST SEVEN YEARS;

50 P. PROOF OF ANY SURETY BOND REQUIRED BY LAW AND INSURANCE FOR WORKERS'  
51 COMPENSATION AND GENERAL AND PROFESSIONAL LIABILITY FOR THE PROJECT; AND

52 Q. WHETHER HEALTH INSURANCE IS PROVIDED TO EMPLOYEES.

53 4. PENALTY. THE QUESTIONNAIRE SHALL BE SUBSCRIBED AND AFFIRMED AS TO  
54 ITS TRUTH, ACCURACY AND COMPLETENESS UNDER PENALTY OF PERJURY.

55 5. CHANGE OF INFORMATION ON QUESTIONNAIRE. ANY CONTRACTOR OR SUBCON-  
56 TRACTOR THAT HAS SUBMITTED A QUESTIONNAIRE ELECTRONICALLY UNDER THIS

1 SECTION SHALL BE REQUIRED TO UPDATE ANY CHANGE IN THAT INFORMATION, IN A  
2 FORM ESTABLISHED BY THE COMPTROLLER, BEFORE THE CONTRACTOR OR SUBCON-  
3 TRACTOR IS CONSIDERED FOR THE AWARD OF ANOTHER CONTRACT.

4 6. AWARD OF PUBLIC WORK CONTRACT TO LOWEST RESPONSIBLE BIDDER. A.  
5 WHERE A PUBLIC WORK CONTRACT IS REQUIRED TO BE AWARDED TO THE LOWEST  
6 RESPONSIBLE BIDDER, NO CONTRACT MAY BE AWARDED TO A BIDDER IF ANY OF ITS  
7 CONTRACTORS OR SUBCONTRACTORS:

8 (I) HAVE HAD A FINAL DETERMINATION RENDERED FOR A FAILURE TO PAY  
9 PREVAILING WAGES AND SUPPLEMENTS REQUIRED UNDER ARTICLE EIGHT OF THE  
10 LABOR LAW, A FAILURE TO SECURE INSURANCE REQUIRED UNDER ARTICLES TWO AND  
11 NINE OF THE WORKERS' COMPENSATION LAW, A FAILURE TO PAY UNEMPLOYMENT TAX  
12 REQUIRED UNDER ARTICLE EIGHTEEN OF THE LABOR LAW, OR A VIOLATION OF  
13 EMPLOYEE MISCLASSIFICATION, BY ANY FEDERAL OR STATE AGENCY OR COURT  
14 WITHIN THE PAST TEN YEARS;

15 (II) HAVE HAD A CRIMINAL CONVICTION FOR BUSINESS-RELATED ACTIVITY,  
16 INCLUDING BUT NOT LIMITED TO BRIBERY, EXTORTION, FRAUD, RACKETEERING,  
17 CONTRACT BIDDING AND RESTRAINT OF TRADE BY THE CONTRACTOR, SUBCONTRAC-  
18 TORS OR ITS AFFILIATES WITHIN THE PAST TEN YEARS;

19 (III) FAIL TO PARTICIPATE IN AN APPRENTICESHIP TRAINING PROGRAM  
20 APPROVED AND REGISTERED WITH THE STATE OR FEDERAL DEPARTMENT OF LABOR;  
21 OR

22 (IV) FAIL TO PROVIDE PROOF OF ANY SURETY BOND REQUIRED BY LAW AND  
23 WORKERS' COMPENSATION COVERAGE.

24 B. A CONTRACTING ENTITY MAY DETERMINE THAT A BIDDER IS NOT RESPONSIBLE  
25 AND NOT AWARD A CONTRACT TO THE BIDDER UPON FINDING THAT:

26 (I) THE PROPOSED CONTRACTOR OR SUBCONTRACTORS FOR THE CONTRACT LACK  
27 ADEQUATE EXPERTISE, OR LACK THE FINANCIAL RESOURCES TO PERFORM THE  
28 CONTRACT OR SUBCONTRACT IN A TIMELY AND COMPETENT MANNER;

29 (II) THE EQUIPMENT TO BE USED FOR THE CONTRACT IS NOT SAFE FOR OPERA-  
30 TION BY EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTORS, OR FOR THE  
31 PUBLIC;

32 (III) THE CONTRACTOR, SUBCONTRACTORS OR ITS AFFILIATES HAVE COMMITTED  
33 A VIOLATION OF ANY LAWS UNDER PARAGRAPH F, G, H, OR I OF SUBDIVISION  
34 THREE OF THIS SECTION WITHIN THE PAST FIVE YEARS;

35 (IV) THE BID SUBMITTED IS SO MUCH LOWER THAN THE AGENCY'S ENGINEER'S  
36 ESTIMATE THAT IT SEEMS UNLIKELY THAT THE BIDDER WILL BE ABLE TO PERFORM  
37 THE CONTRACT SATISFACTORILY AT THE PRICE BID;

38 (V) THE BID SUBMITTED IS MATHEMATICALLY OR MATERIALLY UNBALANCED;

39 (VI) A LACK OF GOOD FAITH EFFORT TO COMPLY WITH STATE AND FEDERAL  
40 REQUIREMENTS FOR USE OF MINORITY-OWNED, WOMEN-OWNED AND  
41 DISADVANTAGED-OWNED BUSINESSES;

42 (VII) FALSE OR MISLEADING INFORMATION HAS BEEN PRESENTED TO THE  
43 CONTRACTING ENTITY IN CONNECTION WITH THE BID; OR

44 (VIII) ANY OTHER INFORMATION WHICH RAISES SERIOUS QUESTIONS CONCERNING  
45 THE PRESENT CAPABILITY AND RESPONSIBILITY OF THE CONTRACTOR OR ANY  
46 SUBCONTRACTOR TO PERFORM THE CONTRACT.

47 S 2. The general municipal law is amended by adding a new section  
48 100-b to read as follows:

49 S 100-B. LOWEST RESPONSIBLE BIDDER. 1. DEFINITION. FOR THE PURPOSES  
50 OF THIS SECTION, "LOWEST RESPONSIBLE BIDDER" SHALL MEAN THE PERSON,  
51 FIRM, CORPORATION, CONTRACTOR OR SUBCONTRACTOR OR OTHER ENTITY SUBMIT-  
52 TING A BID FOR A PUBLIC WORK CONTRACT FOR THE ERECTION, CONSTRUCTION,  
53 RECONSTRUCTION OR ALTERATION OF BUILDINGS WHO:

54 A. SUBMITS THE LOWEST BID; AND

55 B. IS NOT DISQUALIFIED ON ANY OF THE GROUNDS LISTED UNDER SUBDIVISION  
56 SIX OF THIS SECTION.

1 2. USE OF QUESTIONNAIRE TO DETERMINE RESPONSIBILITY OF CONTRACTORS AND  
2 SUBCONTRACTORS. A. NO PUBLIC WORK CONTRACT IN AN AMOUNT EXCEEDING ONE  
3 HUNDRED THOUSAND DOLLARS MAY BE AWARDED BY ANY POLITICAL SUBDIVISION OR  
4 BY AN OFFICER, BOARD OR AGENCY THEREOF, TO THE LOWEST RESPONSIBLE BIDDER  
5 UNLESS EACH CONTRACTOR AND SUBCONTRACTOR FOR THE CONTRACT SUBMITS, AND  
6 THE CONTRACTING ENTITY REVIEWS, A QUESTIONNAIRE DEMONSTRATING ITS  
7 RESPONSIBILITY TO PERFORM THE CONTRACT.

8 B. QUESTIONNAIRES MUST BE SUBMITTED ELECTRONICALLY TO THE CONTRACTING  
9 ENTITY AND TO THE COMPTROLLER WHO SHALL MAINTAIN THE INFORMATION IN AN  
10 ELECTRONIC DATABASE FOR REVIEW BY ANY STATE OR LOCAL CONTRACTING ENTITY  
11 THAT AWARDS PUBLIC WORK CONTRACTS.

12 3. CONTENTS OF QUESTIONNAIRE. THE COMPTROLLER SHALL PREPARE A UNIFORM  
13 QUESTIONNAIRE FOR USE BY A POLITICAL SUBDIVISION OR BY AN OFFICER, BOARD  
14 OR AGENCY THEREOF, WHICH SHALL REQUIRE EACH CONTRACTOR AND SUBCONTRACTOR  
15 TO PROVIDE THE FOLLOWING INFORMATION:

16 A. THE NAME, ADDRESS AND TELEPHONE NUMBER OF ITS PRINCIPALS, OWNERS,  
17 OFFICERS, SHAREHOLDERS WHO OWN OR CONTROL AT LEAST FIVE PERCENT OF THE  
18 STOCK OF THE CONTRACTOR OR SUBCONTRACTOR, PARENT COMPANY AND SUBSID-  
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22 NUMBER, AND THE DUN AND BRADSTREET NUMBER;

23 C. THE TYPE OF BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO CORPO-  
24 RATION, PARTNERSHIP, LIMITED LIABILITY CORPORATION, LIMITED PARTNERSHIP,  
25 JOINT VENTURE OR SOLE PROPRIETOR;

26 D. THE NAMES AND ADDRESSES OF THE SUBCONTRACTORS PLANNED FOR THE  
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28 E. THE USE OF REGISTERED AND APPROVED APPRENTICESHIP TRAINING PROGRAMS  
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21 CONTRACTORS OR SUBCONTRACTORS:

22 (I) HAVE HAD A FINAL DETERMINATION RENDERED FOR A FAILURE TO PAY  
23 PREVAILING WAGES AND SUPPLEMENTS REQUIRED UNDER ARTICLE EIGHT OF THE  
24 LABOR LAW, A FAILURE TO SECURE INSURANCE REQUIRED UNDER ARTICLES TWO AND  
25 NINE OF THE WORKERS' COMPENSATION LAW, A FAILURE TO PAY UNEMPLOYMENT TAX  
26 REQUIRED UNDER ARTICLE EIGHTEEN OF THE LABOR LAW, THE UNEMPLOYMENT  
27 INSURANCE LAW, OR A VIOLATION OF EMPLOYEE MISCLASSIFICATION, BY ANY  
28 FEDERAL OR STATE AGENCY OR COURT WITHIN THE PAST TEN YEARS;

29 (II) HAVE HAD A CRIMINAL CONVICTION FOR BUSINESS-RELATED ACTIVITY,  
30 INCLUDING BUT NOT LIMITED TO BRIBERY, EXTORTION, FRAUD, RACKETEERING,  
31 CONTRACT BIDDING AND RESTRAINT OF TRADE BY THE CONTRACTOR, SUBCONTRAC-  
32 TORS OR ITS AFFILIATES WITHIN THE PAST TEN YEARS;

33 (III) FAIL TO PARTICIPATE IN AN APPRENTICESHIP TRAINING PROGRAM  
34 APPROVED AND REGISTERED WITH THE STATE OR FEDERAL DEPARTMENT OF LABOR;  
35 OR

36 (IV) FAIL TO PROVIDE PROOF OF ANY SURETY BOND REQUIRED BY LAW AND  
37 WORKERS' COMPENSATION COVERAGE.

38 B. A CONTRACTING ENTITY MAY DETERMINE THAT A BIDDER IS NOT RESPONSIBLE  
39 AND NOT AWARD A CONTRACT TO THE BIDDER UPON FINDING THAT:

40 (I) THE PROPOSED CONTRACTOR OR SUBCONTRACTORS FOR THE CONTRACT LACK  
41 ADEQUATE EXPERTISE, OR LACK THE FINANCIAL RESOURCES TO PERFORM THE  
42 CONTRACT OR SUBCONTRACT IN A TIMELY AND COMPETENT MANNER;

43 (II) THE EQUIPMENT TO BE USED FOR THE CONTRACT IS NOT SAFE FOR OPERA-  
44 TION BY EMPLOYEES OF THE CONTRACTOR OR SUBCONTRACTORS, OR FOR THE  
45 PUBLIC;

46 (III) THE CONTRACTOR, SUBCONTRACTORS OR ITS AFFILIATES HAVE COMMITTED  
47 A VIOLATION OF ANY LAWS UNDER PARAGRAPH F, G, H, OR I OF SUBDIVISION  
48 THREE OF THIS SECTION WITHIN THE PAST FIVE YEARS;

49 (IV) THE BID SUBMITTED IS SO MUCH LOWER THAN THE ENGINEER'S ESTIMATE  
50 THAT IT SEEMS UNLIKELY THAT THE BIDDER WILL BE ABLE TO PERFORM THE  
51 CONTRACT SATISFACTORILY AT THE PRICE BID;

52 (V) THE BID SUBMITTED IS MATHEMATICALLY OR MATERIALLY UNBALANCED;

53 (VI) A LACK OF GOOD FAITH EFFORT TO COMPLY WITH STATE AND FEDERAL  
54 REQUIREMENTS FOR USE OF MINORITY-OWNED, WOMEN-OWNED AND  
55 DISADVANTAGED-OWNED BUSINESSES;

1 (VII) FALSE OR MISLEADING INFORMATION HAS BEEN PRESENTED TO THE  
2 CONTRACTING ENTITY IN CONNECTION WITH THE BID; OR

3 (VIII) ANY OTHER INFORMATION WHICH RAISES SERIOUS QUESTIONS CONCERNING  
4 THE PRESENT CAPABILITY AND RESPONSIBILITY OF THE CONTRACTOR OR ANY  
5 SUBCONTRACTOR TO PERFORM THE CONTRACT.

6 S 3. This act shall take effect on the ninetieth day after it shall  
7 have become a law.