

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

3059--A

2013-2014 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. SCHIMMINGER, P. LOPEZ, CORWIN, WALTER, MAGEE, BRINDISI -- Multi-Sponsored by -- M. of A. BOYLAND, GOODELL, HAWLEY -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, 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 chapter 2 of the laws of 2012, is amended to
5 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, provided, however, that purchase contracts
16 (including contracts for service work, but excluding any purchase
17 contracts necessary for the completion of a public works contract pursu-
18 ant to article eight of the labor law) may be awarded on the basis of
19 best value, as defined in section one hundred sixty-three of the state
20 finance law, to a responsive and responsible bidder or offerer in the
21 manner provided by this section except that in a political subdivision

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

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1 other than a city with a population of one million inhabitants or more
2 or any district, board or agency with jurisdiction exclusively therein
3 the use of best value for awarding a purchase contract or purchase
4 contracts must be authorized by local law or, in the case of a district
5 corporation, school district or board of cooperative educational
6 services, by rule, regulation or resolution adopted at a public meeting.
7 In any case where a responsible bidder's or responsible offerer's gross
8 price is reducible by an allowance for the value of used machinery,
9 equipment, apparatus or tools to be traded in by a political subdivi-
10 sion, the gross price shall be reduced by the amount of such allowance,
11 for the purpose of determining the best value. In cases where two or
12 more responsible bidders furnishing the required security submit identi-
13 cal bids as to price, such officer, board or agency may award the
14 contract to any of such bidders. Such officer, board or agency may, in
15 his or her or its discretion, reject all bids or offers and readvertise
16 for new bids or offers in the manner provided by this section. In deter-
17 mining whether a purchase is an expenditure within the discretionary
18 threshold amounts established by this subdivision, the officer, board or
19 agency of a political subdivision or of any district therein shall
20 consider the reasonably expected aggregate amount of all purchases of
21 the same commodities, services or technology to be made within the
22 twelve-month period commencing on the date of purchase. Purchases of
23 commodities, services or technology shall not be artificially divided
24 for the purpose of satisfying the discretionary buying thresholds estab-
25 lished by this subdivision. A change to or a renewal of a discretionary
26 purchase shall not be permitted if the change or renewal would bring the
27 reasonably expected aggregate amount of all purchases of the same
28 commodities, services or technology from the same provider within the
29 twelve-month period commencing on the date of the first purchase to an
30 amount greater than the discretionary buying threshold amount. For
31 purposes of this section, "sealed bids" and "sealed offers", as that
32 term applies to purchase contracts, (including contracts for service
33 work, but excluding any purchase contracts necessary for the completion
34 of a public works contract pursuant to article eight of the labor law)
35 shall include bids and offers submitted in an electronic format includ-
36 ing submission of the statement of non-collusion required by section one
37 hundred three-d of this article, provided that the governing board of
38 the political subdivision or district, by resolution, has authorized the
39 receipt of bids and offers in such format. Submission in electronic
40 format may, for technology contracts only, be required as the sole meth-
41 od for the submission of bids and offers. Bids and offers submitted in
42 an electronic format shall be transmitted by bidders and offerers to the
43 receiving device designated by the political subdivision or district.
44 Any method used to receive electronic bids and offers shall comply with
45 article three of the state technology law, and any rules and regulations
46 promulgated and guidelines developed thereunder and, at a minimum, must
47 (a) document the time and date of receipt of each bid and offer received
48 electronically; (b) authenticate the identity of the sender; (c) ensure
49 the security of the information transmitted; and (d) ensure the confi-
50 dentiality of the bid or offer until the time and date established for
51 the opening of bids or offers. The timely submission of an electronic
52 bid or offer in compliance with instructions provided for such
53 submission in the advertisement for bids or offers and/or the specifica-
54 tions shall be the responsibility solely of each bidder or offerer or
55 prospective bidder or offerer. No political subdivision or district
56 therein shall incur any liability from delays of or interruptions in the

1 receiving device designated for the submission and receipt of electronic
2 bids and offers. A CONTRACTOR BIDDING ON A REQUEST FOR PROPOSAL ISSUED
3 BY THE APPROPRIATE OFFICER, BOARD OR AGENCY OF A POLITICAL SUBDIVISION
4 OR OF ANY DISTRICT THEREIN, INCLUDING BUT NOT LIMITED TO A SOIL CONSER-
5 VATION DISTRICT, OFFERING AN OPTIONAL PROJECT LABOR AGREEMENT PURSUANT
6 TO PARAGRAPH (A) OF SUBDIVISION TWO OF SECTION TWO HUNDRED TWENTY-TWO OF
7 THE LABOR LAW, MAY SUBMIT A BID THAT DOES NOT INCLUDE A PROJECT LABOR
8 AGREEMENT, AND SUCH CONTRACT FOR PUBLIC WORK SHALL BE AWARDED TO THE
9 CONTRACTOR WITH THE LOW BID REGARDLESS OF WHETHER A PROJECT LABOR AGREE-
10 MENT WAS INCLUDED IN A CONTRACTOR'S BID PROPOSAL.

11 S 3. Subdivision 1 of section 103 of the general municipal law, as
12 amended by section 2 of chapter 2 of the laws of 2012, is amended to
13 read as follows:

14 1. Except as otherwise expressly provided by an act of the legislature
15 or by a local law adopted prior to September first, nineteen hundred
16 fifty-three, all contracts for public work involving an expenditure of
17 more than thirty-five thousand dollars and all purchase contracts
18 involving an expenditure of more than twenty thousand dollars, shall be
19 awarded by the appropriate officer, board or agency of a political
20 subdivision or of any district therein including but not limited to a
21 soil conservation district to the lowest responsible bidder furnishing
22 the required security after advertisement for sealed bids in the manner
23 provided by this section, provided, however, that purchase contracts
24 (including contracts for service work, but excluding any purchase
25 contracts necessary for the completion of a public works contract pursu-
26 ant to article eight of the labor law) may be awarded on the basis of
27 best value, as defined in section one hundred sixty-three of the state
28 finance law, to a responsive and responsible bidder or offerer in the
29 manner provided by this section except that in a political subdivision
30 other than a city with a population of one million inhabitants or more
31 or any district, board or agency with jurisdiction exclusively therein
32 the use of best value of awarding a purchase contract or purchase
33 contracts must be authorized by local law or, in the case of a district
34 corporation, school district or board of cooperative educational
35 services, by rule, regulation or resolution adopted at a public meeting.
36 In determining whether a purchase is an expenditure within the discre-
37 tionary threshold amounts established by this subdivision, the officer,
38 board or agency of a political subdivision or of any district therein
39 shall consider the reasonably expected aggregate amount of all purchases
40 of the same commodities, services or technology to be made within the
41 twelve-month period commencing on the date of purchase. Purchases of
42 commodities, services or technology shall not be artificially divided
43 for the purpose of satisfying the discretionary buying thresholds estab-
44 lished by this subdivision. A change to or a renewal of a discretionary
45 purchase shall not be permitted if the change or renewal would bring the
46 reasonably expected aggregate amount of all purchases of the same
47 commodities, services or technology from the same provider within the
48 twelve-month period commencing on the date of the first purchase to an
49 amount greater than the discretionary buying threshold amount. In any
50 case where a responsible bidder's or responsible offerer's gross price
51 is reducible by an allowance for the value of used machinery, equipment,
52 apparatus or tools to be traded in by a political subdivision, the gross
53 price shall be reduced by the amount of such allowance, for the purpose
54 of determining the low bid or best value. In cases where two or more
55 responsible bidders furnishing the required security submit identical
56 bids as to price, such officer, board or agency may award the contract

1 to any of such bidders. Such officer, board or agency may, in his, her
2 or its discretion, reject all bids or offers and readvertise for new
3 bids or offers in the manner provided by this section. A CONTRACTOR
4 BIDDING ON A REQUEST FOR PROPOSAL ISSUED BY THE APPROPRIATE OFFICER,
5 BOARD OR AGENCY OF A POLITICAL SUBDIVISION OR OF ANY DISTRICT THEREIN,
6 INCLUDING BUT NOT LIMITED TO A SOIL CONSERVATION DISTRICT, OFFERING AN
7 OPTIONAL PROJECT LABOR AGREEMENT PURSUANT TO PARAGRAPH (A) OF SUBDIVI-
8 SION TWO OF SECTION TWO HUNDRED TWENTY-TWO OF THE LABOR LAW, MAY SUBMIT
9 A BID THAT DOES NOT INCLUDE A PROJECT LABOR AGREEMENT, AND SUCH CONTRACT
10 FOR PUBLIC WORK SHALL BE AWARDED TO THE CONTRACTOR WITH THE LOW BID
11 REGARDLESS OF WHETHER A PROJECT LABOR AGREEMENT WAS INCLUDED IN A
12 CONTRACTOR'S BID PROPOSAL.

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

15 S 148. PROJECT LABOR AGREEMENTS. A CONTRACTOR BIDDING ON A REQUEST
16 FOR PROPOSAL ISSUED BY AN OFFICER, BOARD, DEPARTMENT, COMMISSION OR
17 COMMISSIONS FOR (I) THE ERECTION, CONSTRUCTION OR ALTERATION OF BUILD-
18 INGS FOR THE STATE, OR (II) THE CONSTRUCTION, RECONSTRUCTION, REPAIR OR
19 IMPROVEMENT TO ROADS, TOLLROADS, HIGHWAYS, RAILWAYS, BRIDGES, TERMINALS,
20 OR OTHER TRANSPORTATION FACILITIES FOR THE STATE, OFFERING AN OPTIONAL
21 PROJECT LABOR AGREEMENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF
22 SECTION TWO HUNDRED TWENTY-TWO OF THE LABOR LAW, MAY SUBMIT A BID THAT
23 DOES NOT INCLUDE A PROJECT LABOR AGREEMENT AND SUCH CONTRACT FOR PUBLIC
24 WORK SHALL BE AWARDED TO THE CONTRACTOR WITH THE LOW BID REGARDLESS OF
25 WHETHER A PROJECT LABOR AGREEMENT WAS INCLUDED IN A CONTRACTOR'S BID
26 PROPOSAL.

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

30 (a) Any agency, board, department, commission or officer of the state
31 of New York, or of any political subdivision thereof as defined in
32 section one hundred of the general municipal law, municipal corporation
33 as defined in section sixty-six of the general construction law, public
34 benefit corporation, or local or state authority as defined in section
35 two of the public authorities law having jurisdiction over the public
36 work may NOT require[a contractor awarded a contract, subcontract,
37 lease, grant, bond, covenant or other agreement for a project to enter
38 into], BUT MAY OFFER AS AN OPTION, PARTICIPATION IN a project labor
39 agreement [during and for the work involved with such project when such
40 requirement is], AND SHALL NOTIFY EACH CONTRACTOR OF THE OPTION TO
41 INCLUDE OR NOT INCLUDE PARTICIPATION IN A PROJECT LABOR AGREEMENT WITH
42 ITS BID, AS part of the agency, board, department, commission or officer
43 of the state of New York, political subdivision, municipal corporation,
44 public benefit corporation or local or state authority having jurisdic-
45 tion over the public work request for proposals for the project and when
46 the agency, board, department, commission or officer of the state of New
47 York, political subdivision, municipal corporation, public benefit
48 corporation or local or state authority having jurisdiction over the
49 public work determines that its interest in obtaining the best work at
50 the lowest possible price, preventing favoritism, fraud and corruption,
51 and other considerations such as the impact of delay, the possibility of
52 cost savings advantages, and any local history of labor unrest, are best
53 met by requiring a project labor agreement, BUT SHALL IN ANY EVENT
54 AWARD THE SUBCONTRACT, LEASE, CONTRACT, GRANT, BOND, COVENANT OR OTHER
55 AGREEMENT FOR A PROJECT TO THE CONTRACTOR WITH THE LOW BID REGARDLESS OF

1 WHETHER A PROJECT LABOR AGREEMENT WAS INCLUDED IN THE CONTRACTOR'S BID
2 PROPOSAL.
3 S 6. This act shall take effect on the sixtieth day after it shall
4 have become a law, and shall control all contracts advertised or solic-
5 ited for bid on or after the effective date of this act under the
6 provisions of any law requiring contracts to be let pursuant to
7 provisions of law amended by this act; provided, however that the amend-
8 ments to subdivision 1 of section 103 of the general municipal law made
9 by section two of this act shall be subject to the expiration and rever-
10 sion of such subdivision pursuant to subdivision (a) of section 41 of
11 part X of chapter 62 of the laws of 2003, as amended, when upon such
12 date the provisions of section three of this act shall take effect.