

4791--A

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I N A S S E M B L Y

February 8, 2013

Introduced by M. of A. TITONE, GOTTFRIED, MILLMAN, BRONSON, LAVINE, COOK, KAVANAGH, PERRY, WEPRIN, ABINANTI -- Multi-Sponsored by -- M. of A. AUBRY, BRENNAN, FINCH, GALEF, GLICK, HOOPER, MOYA, SWEENEY -- read once and referred to the Committee on Governmental Operations -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Ways and Means -- advanced to a third reading, passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the state finance law, in relation to arbitration provisions in state contracts

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

1 Section 1. Section 165 of the state finance law is amended by adding a
2 new subdivision 9 to read as follows:
3 9. ARBITRATION PROVISION. A. FOR THE PURPOSES OF THIS SUBDIVISION
4 "ARBITRATION PROVISIONS" SHALL MEAN ANY REQUIREMENT THAT AN EMPLOYEE OR
5 INDEPENDENT CONTRACTOR PERFORMING WORK UNDER SUCH VENDOR'S CONTRACT OR
6 SUBCONTRACT TO SUBMIT CLAIMS ARISING UNDER TITLE VII OF THE CIVIL RIGHTS
7 ACT OF 1964 OR ARTICLE FIFTEEN OF THE EXECUTIVE LAW TO PRIVATE ARBI-
8 TRATION FOR RESOLUTION; THIS SHALL NOT INCLUDE ARBITRATION THAT IS
9 MANDATED BY A COLLECTIVE BARGAINING AGREEMENT BETWEEN SUCH VENDOR AND
10 EMPLOYEE AND/OR INDEPENDENT CONTRACTOR.
11 B. (I) WITH RESPECT TO CONTRACTS DESCRIBED IN SUBPARAGRAPHS (II) AND
12 (III) OF THIS PARAGRAPH, AND IN ACCORDANCE WITH SUCH SUBPARAGRAPHS,
13 STATE AGENCIES AS DEFINED IN THIS ARTICLE SHALL NOT CONTRACT FOR THE
14 SUPPLY OF COMMODITIES, SERVICE OR CONSTRUCTION WITH ANY CONTRACTOR WHO
15 DOES NOT AGREE TO STIPULATE TO THE FOLLOWING, IF THERE IS ANOTHER
16 CONTRACTOR WHO WILL CONTRACT TO SUPPLY COMMODITIES, SERVICES OR
17 CONSTRUCTION OF COMPARABLE QUALITY AT A COMPARABLE PRICE OR COST: THE

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

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1 CONTRACTOR SHALL NOT PLACE ANY ARBITRATION PROVISION UPON THEIR EMPLOY-
2 EES THAT WORK ON SUCH CONTRACT.

3 (II) IN THE CASE OF CONTRACTS LET BY A COMPETITIVE PROCESS, WHENEVER
4 THE RESPONSIVE AND RESPONSIBLE OFFERER HAVING THE LOWEST PRICE OR BEST
5 VALUE OFFER HAS NOT AGREED TO STIPULATE TO THE CONDITIONS SET FORTH IN
6 THIS SUBDIVISION AND ANOTHER RESPONSIVE AND RESPONSIBLE OFFERER WHO HAS
7 AGREED TO STIPULATE TO SUCH CONDITIONS HAS SUBMITTED AN OFFER WITHIN
8 FIVE PERCENT OF THE LOWEST PRICE OR BEST VALUE OFFER FOR A CONTRACT TO
9 SUPPLY COMMODITIES, SERVICES OR CONSTRUCTION OF COMPARABLE QUALITY, THE
10 CONTRACTING ENTITY SHALL REFER SUCH OFFERS TO THE COMMISSIONER OF GENER-
11 AL SERVICES, WHO MAY DETERMINE, IN ACCORDANCE WITH APPLICABLE LAW AND
12 RULES, THAT IT IS IN THE BEST INTEREST OF THE STATE THAT THE CONTRACT BE
13 AWARDED TO OTHER THAN THE LOWEST PRICE OR BEST VALUE OFFER.

14 (III) IN THE CASE OF CONTRACTS LET BY OTHER THAN A COMPETITIVE PROCESS
15 FOR GOODS OR SERVICES INVOLVING AN EXPENDITURE OF AN AMOUNT GREATER THAN
16 THE DISCRETIONARY BUYING THRESHOLD AS SPECIFIED IN SECTION ONE HUNDRED
17 SIXTY-THREE OF THIS ARTICLE, OR FOR CONSTRUCTION INVOLVING AN AMOUNT
18 GREATER THAN FIFTEEN THOUSAND DOLLARS, THE CONTRACTING ENTITY SHALL NOT
19 AWARD TO A PROPOSED CONTRACTOR WHO HAS NOT AGREED TO STIPULATE TO THE
20 CONDITIONS SET FORTH IN THIS SUBDIVISION UNLESS THE ENTITY SEEKING TO
21 USE THE COMMODITIES, SERVICES OR CONSTRUCTION DETERMINES THAT THE
22 COMMODITIES, SERVICES OR CONSTRUCTION ARE NECESSARY FOR THE ENTITY TO
23 PERFORM ITS FUNCTIONS AND THERE IS NO OTHER RESPONSIBLE CONTRACTOR WHO
24 WILL SUPPLY COMMODITIES, SERVICES OR CONSTRUCTION OF COMPARABLE QUALITY
25 AT A COMPARABLE PRICE. SUCH DETERMINATIONS SHALL BE MADE IN WRITING AND
26 SHALL BE PUBLIC DOCUMENTS.

27 C. UPON RECEIVING INFORMATION THAT A CONTRACTOR WHO HAS MADE THE STIP-
28 ULATION REQUIRED BY THIS SUBDIVISION IS IN VIOLATION THEREOF, THE
29 CONTRACTING ENTITY SHALL REVIEW SUCH INFORMATION AND OFFER THE CONTRAC-
30 TOR AN OPPORTUNITY TO RESPOND. IF THE CONTRACTING ENTITY FINDS THAT A
31 VIOLATION HAS OCCURRED, IT SHALL TAKE SUCH ACTION AS MAY BE APPROPRIATE
32 AND PROVIDED FOR BY LAW, RULE OR CONTRACT, INCLUDING, BUT NOT LIMITED
33 TO, IMPOSING SANCTIONS, SEEKING COMPLIANCE, RECOVERING DAMAGES OR
34 DECLARING THE CONTRACTOR IN DEFAULT.

35 D. AS USED IN THIS SUBDIVISION, THE TERM "CONTRACT" SHALL NOT INCLUDE
36 CONTRACTS WITH GOVERNMENTAL AND NON-PROFIT ORGANIZATIONS, CONTRACTS
37 AWARDED PURSUANT TO EMERGENCY PROCUREMENT PROCEDURES OR CONTRACTS,
38 RESOLUTIONS, INDENTURES, DECLARATIONS OF TRUST OR OTHER INSTRUMENTS
39 AUTHORIZING OR RELATING TO THE AUTHORIZATION, ISSUANCE, AWARD, SALE OR
40 PURCHASE OF BONDS, CERTIFICATES OF INDEBTEDNESS, NOTES OR OTHER FISCAL
41 OBLIGATIONS, PROVIDED THAT THE POLICIES OF THIS SUBDIVISION SHALL BE
42 CONSIDERED WHEN SELECTING A CONTRACTOR TO PROVIDE FINANCIAL OR LEGAL
43 ADVICE, AND WHEN SELECTING MANAGING UNDERWRITERS IN CONNECTION WITH SUCH
44 ACTIVITIES.

45 S 2. This act shall take effect immediately and shall apply to all
46 contracts signed and executed on or after such effective date.