

2760--A

2013-2014 Regular Sessions

I N   S E N A T E

January 23, 2013

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Introduced by Sens. RANZENHOFER, DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- 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  
22    other than a city with a population of one million inhabitants or more

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

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

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

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

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

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

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

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

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

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

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