

3059--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

January 23, 2013

---

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.

LBD05157-03-3

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 solici-  
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.