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

3183

2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. BRENNAN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, in relation to subcontracting by public authorities

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

Section 1. Article 9 of the public authorities law is amended by adding a new title 4-A to read as follows:

TITLE 4-A
SUBCONTRACTING BY PUBLIC AUTHORITIES

SECTION 2883. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES.

S 2883. CONTRACTS FOR PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES. 1. DEFINITIONS. AS USED IN THIS TITLE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS, UNLESS OTHERWISE SPECIFIED:

(A) "PUBLIC AUTHORITY" MEANS (1) ANY PUBLIC AUTHORITY, PUBLIC BENEFIT CORPORATION, OR COMMISSION CREATED BY OR EXISTING UNDER THIS CHAPTER; (2) ANY PUBLIC AUTHORITY OR A PUBLIC BENEFIT CORPORATION, AT LEAST ONE OF WHOSE MEMBERS IS APPOINTED BY THE GOVERNOR OR WHO SERVES AS A MEMBER BY VIRTUE OF HOLDING A CIVIL OFFICE OF THE STATE; (3) A NOT-FOR-PROFIT CORPORATION AFFILIATED WITH, SPONSORED BY, OR CREATED BY A STATE AGENCY; (4) A NOT-FOR-PROFIT CORPORATION CREATED BY OR EXISTING UNDER ARTICLE TWO OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AND OPERATING UNDER AN EXCLUSIVE FRANCHISE GRANTED BY THE STATE; (5) A MUNICIPAL INDUSTRIAL DEVELOPMENT AGENCY OR OTHER LOCAL PUBLIC BENEFIT CORPORATION; OR (6) A SUBSIDIARY OR AFFILIATE OF A PUBLIC AUTHORITY.

(B) "CONTRACT" MEANS AN ENFORCEABLE AGREEMENT, ENTERED INTO BY A CONTRACTOR AND A PUBLIC AUTHORITY, WHICH EXCEEDS TWO HUNDRED FIFTY THOUSAND DOLLARS. A SINGLE CONTRACT WHICH IS DIVIDED INTO SEPARATE CONTRACTS

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

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SOLELY TO AVOID THE APPLICATION OF THIS TITLE SHALL BE DEEMED A SINGLE CONTRACT FOR PURPOSES OF THIS TITLE.

(C) "CONTRACTOR" MEANS ANY PERSON, PARTNERSHIP, FIRM, CORPORATION, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER ENTITY RENDERING OR PROVIDING PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES PURSUANT TO A CONTRACT WITH A PUBLIC AUTHORITY.

(D) "SERVICES" MEANS ANY PROFESSIONAL, MAINTENANCE, CLERICAL, OR TECHNICAL SERVICES CURRENTLY PERFORMED BY MEMBERS OF THE PROFESSIONAL, MAINTENANCE, CLERICAL, AND TECHNICAL BARGAINING UNIT OF A PUBLIC AUTHORITY OR WHICH COME WITHIN THE SCOPE OF THE PROFESSIONAL PRACTICE OF THE MEMBERS OF SUCH BARGAINING UNIT.

(E) "CHANGE ORDER" MEANS A WRITTEN ORDER BY A PUBLIC AUTHORITY DIRECTING THE CONTRACTOR TO MAKE CHANGES IN A CONTRACT.

(F) "CONTRACT MODIFICATION" MEANS ANY WRITTEN ALTERATION TO SPECIFICATIONS, DELIVERY POINT, RATE OF DELIVERY, PERIOD OF PERFORMANCE, PRICE, QUALITY, OR OTHER PROVISIONS OF ANY CONTRACT ACCOMPLISHED BY MUTUAL ACTION OF THE PARTIES TO THE CONTRACT.

2. GUIDELINES FOR CONTRACTING FOR SERVICES. NO CONTRACT WITH A CONTRACTOR FOR SERVICES SHALL BE ENTERED INTO BY A PUBLIC AUTHORITY UNLESS CONTRACTING FOR SUCH SERVICES IS:

(A) COST EFFECTIVE WHEN COMPARED TO THE COST OF HAVING A PUBLIC AUTHORITY PERFORM THE WORK; OR

(B) REQUIRED FOR A SHORT DURATION, MAKING IT IMPRACTICAL TO HIRE BARGAINING UNIT EMPLOYEES TO PERFORM THE SERVICE; OR

(C) REQUIRED FOR SPECIAL EXPERTISE NOT CURRENTLY AVAILABLE IN THE BARGAINING UNIT; OR

(D) REQUIRED DUE TO AN URGENT NEED SUCH THAT THE DELAY IN HIRING EMPLOYEES WOULD FRUSTRATE THE PUBLIC INTEREST; OR

(E) REQUIRED TO AVOID A CONFLICT OF INTEREST; OR

(F) OTHERWISE REQUIRED TO BE SO CONTRACTED; OR

(G) IN COMPLIANCE WITH THE PUBLIC AUTHORITY'S AFFIRMATIVE ACTION EFFORTS AND WILL NOT CAUSE THE PUBLIC AUTHORITY TO FAIL TO MEET ITS AFFIRMATIVE ACTION GOALS. A CONTRACTOR MUST ALSO MEET OR EXCEED THE PUBLIC AUTHORITY'S GOALS FOR AFFIRMATIVE ACTION; OR

(H) IN COMPLIANCE WITH THE REQUIREMENTS OF APPLICABLE STATE, LOCAL, AND FEDERAL LAW.

3. COST BENEFIT ANALYSIS. IN DETERMINING IF A CONTRACT IS COST EFFECTIVE, THE PUBLIC AUTHORITY SHALL PERFORM A COST BENEFIT ANALYSIS WHICH SHALL EVALUATE, BUT NOT BE LIMITED TO, THE FOLLOWING FACTORS:

(A) REIMBURSEMENT FROM OTHER SOURCES;

(B) BOTH THE DIRECT AND INDIRECT COSTS OF PERFORMING THE WORK;

(C) WHETHER OR NOT THE CONTRACTOR PROVIDES WAGES AND SUPPLEMENTS TO ITS EMPLOYEES WHICH ARE COMPARABLE TO THOSE PAID TO SIMILAR EMPLOYEES PERFORMING SIMILAR WORK IN THE GEOGRAPHIC AREA WHERE THE WORK IS TO BE PERFORMED. A CONTRACT MAY NOT BE CONSIDERED COST EFFECTIVE IF SUCH WAGES AND SUPPLEMENTS ARE SUBSTANTIALLY BELOW THOSE CUSTOMARILY PAID IN THE AREA; AND

(D) THE QUALITY OF SERVICE BEING PROVIDED.

4. REVIEW OF CONTRACTS FOR SERVICES. (A) PRIOR TO EXECUTING A CONTRACT FOR SERVICES, A PUBLIC AUTHORITY SHALL PREPARE A SPECIFIC STATEMENT WHICH SETS FORTH THE OBJECTIVE DATA SUPPORTING THE REASONS WHY THE PROPOSED CONTRACT MEETS THE REQUIREMENTS SET FORTH IN SUBDIVISION TWO OF THIS SECTION.

(B) (1) PRIOR TO THE SCHEDULED AWARD OF A CONTRACT FOR SERVICES, A PUBLIC AUTHORITY SHALL PROVIDE TO THE EMPLOYEE ORGANIZATION THAT REPRESENTS PUBLIC AUTHORITY EMPLOYEES WHO WOULD OTHERWISE PERFORM SUCH

SERVICES WITH COPIES OF THE STATEMENT RENDERED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION AND THE PROPOSED CONTRACT SO THAT SUCH EMPLOYEE ORGANIZATION SHALL HAVE AT LEAST FIFTEEN DAYS TO OBJECT TO THE PROPOSED CONTRACT. AN EMPLOYEE ORGANIZATION WHICH PROVIDES TIMELY WRITTEN NOTICE OF OBJECTION AND THE REASONS THEREFOR SHALL, UNLESS THE PUBLIC AUTHORITY AGREES IN WRITING TO WITHDRAW THE PROPOSED CONTRACT, BE PERMITTED TO BE HEARD BY THE PUBLIC AUTHORITY ON ITS OBJECTIONS PRIOR TO THE AWARD OF THE CONTRACT. WITHIN FIFTEEN DAYS OF RECEIPT OF ANY SUCH OBJECTIONS, THE PUBLIC AUTHORITY, AFTER CONSIDERING THE OBJECTIONS OF THE EMPLOYEE ORGANIZATION, SHALL NOTIFY THE EMPLOYEE ORGANIZATION WHETHER THE PUBLIC AUTHORITY WILL WITHDRAW THE PROPOSED CONTRACT OR ENTER INTO THE CONTRACT. IF THE PUBLIC AUTHORITY DECIDES TO ENTER INTO THE CONTRACT, AND THE EMPLOYEE ORGANIZATION STILL BELIEVES THAT THE CONTRACT IS IN VIOLATION OF THE GUIDELINES IN SUBDIVISION TWO OF THIS SECTION, THE EMPLOYEE ORGANIZATION SHALL HAVE THE RIGHT TO BRING A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES TO DETERMINE WHETHER OR NOT THE APPROVAL WAS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARAGRAPH, THE EMPLOYEE ORGANIZATION MAY BE PROVIDED LESS THAN THE REQUIRED FIFTEEN DAYS TO OBJECT TO THE PROPOSED CONTRACT WHEN THE CONTRACT IS REQUIRED TO RESPOND TO AN EMERGENCY WITHIN THE SCOPE OF PARAGRAPH (D) OF SUBDIVISION TWO OF THIS SECTION.

5. CHANGE ORDERS AND CONTRACT MODIFICATIONS. IF A PUBLIC AUTHORITY INTENDS TO CHANGE, BY USE OF A CHANGE ORDER OR CONTRACT MODIFICATION, A CONTRACT FOR SERVICES, AND SUCH CHANGE RESULTS IN CAUSING THE AMOUNT OF THE CONTRACT TO EXCEED ONE HUNDRED TWENTY-FIVE PERCENT OF THE ORIGINAL CONTRACT AMOUNT, THEN APPROVAL OF SUCH CHANGES SHALL BE SUBJECT TO THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION.

S 2. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.