

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

7421--A

2013-2014 Regular Sessions

I N A S S E M B L Y

May 16, 2013

Introduced by M. of A. MAYER -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to the requirements for public bidding in conjunction with and the rate of building aid for the construction, reconstruction, rehabilitation or improvement of educational facilities in the city of Yonkers; and in relation to broadening the scope of educational facilities for such construction, reconstruction, rehabilitation or improvement

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

1 Section 1. Subdivisions 1, 2 and 2-a of section 482 of the education
2 law, subdivision 1 as added by chapter 931 of the laws of 1971, subdivi-
3 sions 2 as amended and 2-a as added by section 6 of part MM of chapter
4 57 of the laws of 2008, are amended to read as follows:
5 1. [Any contract let by the fund or by any letting agency on behalf of
6 the fund for the construction, reconstruction, rehabilitation or
7 improvement of a combined occupancy structure or of the school portion
8 thereof, shall be in conformity with the provisions of section one
9 hundred one of the general municipal law.
10 2. Except as otherwise provided in section two hundred twenty-two of
11 the labor law, every contract, lease or other agreement entered into by
12 or on behalf of the fund for the acquisition, lease, construction,
13 reconstruction, rehabilitation or improvement of any combined occupancy
14 structure shall contain a provision that, when the entire cost of any
15 such contemplated construction, reconstruction, rehabilitation or
16 improvement shall exceed three million dollars in the counties of the
17 Bronx, Kings, New York, Queens, and Richmond; one million five hundred
18 thousand dollars in the counties of Nassau, Suffolk and Westchester; and
19 five hundred thousand dollars in all other counties within the state,

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

LBD10706-05-3

1 separate specifications shall be prepared for the following three subdivi-
2 visions of the work to be performed:

3 a. Plumbing and gas fitting;

4 b. Steam heating, hot water heating, ventilating and air conditioning
5 apparatus; and

6 c. Electric wiring and standard illuminating fixtures.

7 Such specifications shall be drawn so as to permit the letting of
8 separate and independent contracts for each of the above three subdivi-
9 sions of work. Except as otherwise provided by the public housing law,
10 the provisions of which shall apply when the developer is the Yonkers
11 city housing authority, every developer or general contractor undertak-
12 ing the construction, reconstruction, rehabilitation or improvement of
13 any such combined occupancy structure pursuant to or in furtherance of
14 the provisions of this article shall let separate contracts to the
15 lowest responsible bidder for the three subdivisions of the above speci-
16 fied work to persons, firms or corporations approved by the chairman of
17 the fund as being qualified, responsible and reliable bidders engaged in
18 these classes of work. All such qualified bidders engaged in the above
19 specified work shall be entitled to bid and to receive, upon request, a
20 copy of the plans and specifications. All such bids shall be submitted
21 to the fund and shall be opened publicly at a stated time and place.

22 2-a. Each bidder on a public work contract, where the preparation of
23 separate specifications is not required, shall submit with its bid a
24 separate sealed list that names each subcontractor that the bidder will
25 use to perform work on the contract, and the agreed-upon amount to be
26 paid to each, for: a. plumbing and gas fitting, b. steam heating, hot
27 water heating, ventilating and air conditioning apparatus and c. elec-
28 tric wiring and standard illuminating fixtures. After the low bid is
29 announced, the sealed list of subcontractors submitted with such low bid
30 shall be opened and the names of such subcontractors shall be announced,
31 and thereafter any change of subcontractor or agreed-upon amount to be
32 paid to each shall require the approval of the public owner, upon a
33 showing presented to the public owner of legitimate construction need
34 for such change, which shall be open to public inspection. Legitimate
35 construction need shall include, but not be limited to, a change in
36 project specifications, a change in construction material costs, a
37 change to subcontractor status as determined pursuant to paragraph (e)
38 of subdivision two of section two hundred twenty-two of the labor law,
39 or the subcontractor has become otherwise unwilling, unable or unavail-
40 able to perform the subcontract. The sealed lists of subcontractors
41 submitted by all other bidders shall be returned to them unopened after
42 the contract award.] NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL,
43 SPECIAL, OR LOCAL LAW TO THE CONTRARY, ANY CONTRACT ENTERED INTO BY THE
44 FUND OR BY ANY LETTING AGENCY ON BEHALF OF THE FUND FOR THE
45 CONSTRUCTION, RECONSTRUCTION, REHABILITATION OR IMPROVEMENT PURSUANT TO
46 SECTION FOUR HUNDRED SEVENTY-EIGHT OF THIS ARTICLE SHALL BE AWARDED
47 PURSUANT TO PUBLIC BIDDING IN COMPLIANCE WITH SECTION ONE HUNDRED THREE
48 OF THE GENERAL MUNICIPAL LAW OR, IN ORDER TO FOSTER MAJOR INVESTMENT IN
49 COMBINED OCCUPANCY STRUCTURES AND SCHOOL BUILDINGS AND TO DELIVER QUALI-
50 TY PRODUCTS AND SERVICES THAT ARE BENEFICIAL TO THE CITY AND THE CITY
51 SCHOOL DISTRICT AND THE PUBLIC THEY SERVE, ON THE BASIS OF FACTORS OTHER
52 THAN COST ALONE, INCLUDING, BUT NOT LIMITED TO, ADHERENCE TO FACILITY
53 DESIGN, QUALITY AND DURABILITY OR MATERIALS, ENERGY EFFICIENCY, INCORPO-
54 RATING SYSTEMS AND APPROACHES WHICH PROVIDE MAXIMUM FACILITY VALUE USING
55 THE BEST CURRENT DEVELOPMENT, CONSTRUCTION, LEASING, AND FINANCING TECH-
56 NIQUES AVAILABLE, AND MAXIMIZATION OF STATE BUILDING AID, AND SUCH A

1 CONTRACT MAY BE ENTERED INTO PURSUANT TO THE FOLLOWING PROVISIONS FOR
2 THE AWARD OF A CONTRACT BASED ON EVALUATION OF PROPOSALS SUBMITTED IN
3 RESPONSE TO A REQUEST FOR PROPOSALS PREPARED BY OR FOR THE FUND:

4 A. THE FUND SHALL REQUIRE THAT EACH SUCH PROPOSAL TO BE SUBMITTED
5 SHALL INCLUDE INFORMATION RELATING TO THE IDENTITY AND EXPERIENCE OF THE
6 PROPOSER, ITS GENERAL CONTRACTOR, ITS HEATING AND PLUMBING CONTRACTOR,
7 ITS ELECTRICAL CONTRACTOR, ITS DESIGN FIRM, IF ANY, AND THE ABILITY OF
8 THE PROPOSER TO SECURE ADEQUATE FINANCING, INCLUDING THE IDENTIFICATION
9 OF THE FIRM, IF ANY, THAT WILL BE USED FOR FINANCING THE PROJECT AND
10 SPECIFICATION OF ALL ELEMENTS OF COST WHICH WOULD BECOME A CHARGE TO THE
11 CITY OR THE CITY SCHOOL DISTRICT OR BOTH, IN WHATEVER FORM, IN RETURN
12 FOR THE FULFILLMENT BY THE PROPOSER OF ALL TASKS AND RESPONSIBILITIES
13 ESTABLISHED BY THE REQUEST FOR THE PROPOSAL FOR THE FULL LIFETIME OF A
14 PROPOSED CONTRACT, INCLUDING, AS APPROPRIATE, BUT NOT LIMITED TO THE
15 COST OF PLANNING, DESIGN, CONSTRUCTION, FINANCING, AND OWNERSHIP OF SUCH
16 COMBINED OCCUPANCY STRUCTURE OR SCHOOL BUILDING AND SUCH OTHER INFORMA-
17 TION AS THE FUND MAY DETERMINE TO HAVE A MATERIAL BEARING ON ITS ABILITY
18 TO EVALUATE ANY PROPOSAL FOR SUCH COMBINED OCCUPANCY STRUCTURE OR SCHOOL
19 BUILDING, INCLUDING THE USE OF A PORTION OF THE FACILITY OR OF THE SITE
20 BY GOVERNMENT AND NOT-FOR-PROFIT ENTITIES PROVIDING SERVICES TO THE
21 STUDENTS AND THE PUBLIC AND INCLUDING AN AGREEMENT THAT THE PROPOSER, IF
22 AWARDED THE CONTACT, WILL NOT CHANGE THE GENERAL CONTRACTOR, THE PLUMB-
23 ING AND HEATING CONTRACTOR, THE ELECTRICAL CONTRACTOR, THE DESIGN FIRM,
24 OR THE FINANCIAL FIRM IDENTIFIED IN ITS PROPOSAL WITHOUT THE CONCURRENCE
25 OF THE FUND.

26 B. PRIOR TO THE ISSUANCE OF A REQUEST FOR PROPOSALS PURSUANT TO THIS
27 SECTION, THE FUND SHALL PUBLISH A NOTICE OF SUCH ISSUANCE IN THE OFFI-
28 CIAL NEWSPAPER OF THE CITY, IF ANY, AND IN AT LEAST ONE NEWSPAPER OF
29 GENERAL CIRCULATION. CONCURRENT WITH THE PUBLICATION OF SUCH NOTICE, A
30 DRAFT REQUEST FOR PROPOSALS SHALL BE FILED WITH THE FUND. AFTER ALLOWING
31 A THIRTY DAY COMMENT PERIOD AND AN ADDITIONAL TEN DAYS TO REVIEW SUCH
32 COMMENTS, THE FUND MAY PUBLISH THE FINAL REQUEST FOR PROPOSALS AND,
33 CONCURRENT WITH SUCH PUBLICATION, SHALL PUBLISH A NOTICE OF SUCH ISSU-
34 ANCE IN THE MANNER SPECIFIED IN THIS PARAGRAPH. CONCURRENT WITH THE
35 PUBLICATION OF THE FINAL REQUEST FOR PROPOSALS, A SET OF COMMENTS FILED
36 IN RELATION TO THE DRAFT REQUEST FOR PROPOSALS AND FINDINGS RELATED TO
37 THE SUBSTANTIVE ELEMENTS OF SUCH COMMENTS SHALL BE FILED ALONG WITH THE
38 REQUEST FOR PROPOSALS WITH THE FUND AND IN THE PUBLIC LIBRARY OR
39 LIBRARIES IN PROXIMITY TO THE PROPOSED COMBINED OCCUPANCY STRUCTURE OR
40 SCHOOL BUILDING SITE.

41 C. PROPOSALS RECEIVED IN RESPONSE TO SUCH REQUEST FOR PROPOSALS SHALL
42 BE EVALUATED BY THE FUND, TAKING INTO ACCOUNT THE MAXIMIZATION OF STATE
43 BUILDING AID, AS TO NET COST AND IN A MANNER CONSISTENT WITH PROVISIONS
44 SET FORTH IN THE REQUEST FOR PROPOSALS, MAY BE EVALUATED ON THE BASIS OF
45 ADDITIONAL FACTORS, INCLUDING, BUT NOT LIMITED TO, FACILITY DESIGN
46 INCORPORATING SYSTEMS AND APPROACHES WHICH PROVIDE MAXIMUM FACILITY
47 VALUE AT THE LOWEST POSSIBLE COST USING THE BEST CURRENT DEVELOPMENT
48 LIFE CYCLE COSTS, CONSTRUCTION, RECONSTRUCTION, LEASING AND FINANCING
49 TECHNIQUES AVAILABLE, AND USE OF THE COMBINED OCCUPANCY STRUCTURE OR
50 SCHOOL BUILDING AND SITE BY GOVERNMENT AND NOT-FOR-PROFIT ENTITIES
51 PROVIDING SERVICES TO STUDENTS AND THE PUBLIC.

52 D. THE FUND MAY MAKE A CONTRACT AWARD TO ANY RESPONSIBLE PROPOSER
53 SELECTED BASED ON A DETERMINATION BY THE FUND THAT THE SELECTED
54 PROPOSAL IS MOST RESPONSIVE TO THE REQUEST FOR PROPOSALS AND MAY NEGOTI-
55 ATE WITH ANY PROPOSER; PROVIDED, HOWEVER, THAT IF AN AWARD IS MADE TO
56 ANY PROPOSER WHOSE TOTAL PROPOSAL DOES NOT PROVIDE THE LOWEST NET COST,

1 TAKING INTO ACCOUNT THE MAXIMIZATION OF STATE BUILDING AID, THE FUND
2 SHALL ADOPT A RESOLUTION AFTER PUBLIC HEARING WHICH INCLUDES PARTICULAR-
3 IZED FINDINGS RELEVANT TO FACTORS EVALUATED, INDICATING THAT THE FUND'S
4 REQUIREMENTS ARE MET BY SUCH AWARD AND THAT SUCH ACTION IS IN THE PUBLIC
5 INTEREST. SUCH CONTRACT MAY BE A SINGLE GUARANTEED MAXIMUM PRICE
6 CONTRACT OR UTILIZE A FULL CONSTRUCTION MANAGEMENT CONTRACT APPROACH OR
7 OTHER APPROPRIATE APPROACH TO DESIGNING AND CONSTRUCTING THE PROJECT.

8 2. THE FUND MAY REQUIRE A CONTRACTOR AWARDED A CONTRACT TO ENTER INTO
9 A PROJECT LABOR AGREEMENT DURING AND FOR THE WORK INVOLVED WITH SUCH
10 PROJECT WHEN SUCH REQUIREMENT IS PART OF THE FUND'S REQUESTS FOR
11 PROPOSALS FOR THE PROJECT AND WHEN THE FUND DETERMINES THAT THE RECORD
12 SUPPORTING THE DECISION TO ENTER INTO SUCH AN AGREEMENT ESTABLISHES THAT
13 IT IS JUSTIFIED BY THE INTERESTS UNDERLYING THE COMPETITIVE BIDDING
14 LAWS. IN ADDITION, THE FUND MAY CHOOSE TO EXTEND THE PROJECT LABOR
15 AGREEMENT ENTERED INTO FOR THE FIRST PHASE OF THE FUND CONSTRUCTION
16 PROJECTS TO THE PROJECTS AUTHORIZED HEREIN, CONTINGENT UPON THE
17 COMPLETION OF A SUPPLEMENTAL PROJECT LABOR AGREEMENT BENEFITS ANALYSIS.

18 S 2. Section 486 of the education law is amended by adding a new
19 subdivision 3 to read as follows:

20 3. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, BUILD-
21 ING AID FOR RECONSTRUCTION PROJECTS UNDERTAKEN PURSUANT TO THIS ARTICLE
22 SHALL BE CALCULATED AT A RATE THAT IS NO LESS THAN THE AVERAGE BUILDING
23 AID RATIO FOR RECONSTRUCTION PROJECTS UNDERTAKEN PURSUANT TO CHAPTER SIX
24 HUNDRED FIVE OF THE LAWS OF TWO THOUSAND, AS AMENDED, CHAPTER FOUR
25 HUNDRED SIXTEEN OF THE LAWS OF TWO THOUSAND SEVEN, AS AMENDED, AND CHAP-
26 TER FIFTY-EIGHT OF THE LAWS OF TWO THOUSAND SIX, AS AMENDED, WITH
27 RESPECT TO RECONSTRUCTION PROJECTS FOR THE CITY SCHOOL DISTRICTS OF THE
28 CITIES OF BUFFALO, ROCHESTER AND SYRACUSE.

29 S 3. The education law is amended by adding a new section 478-a to
30 read as follows:

31 S 478-A. SCHOOL BUILDINGS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW
32 TO THE CONTRARY, THE POWERS OF THE FUND PURSUANT TO THIS ARTICLE WITH
33 RESPECT TO COMBINED OCCUPANCY STRUCTURES SHALL EXTEND TO SCHOOL BUILD-
34 INGS TO THE SAME EXTENT AND UNDER THE SAME TERMS AS PROVIDED BY THIS
35 ARTICLE, INCLUDING BUT NOT LIMITED TO THE POWER TO DESIGN, CONSTRUCT,
36 ACQUIRE, RECONSTRUCT, REHABILITATE AND IMPROVE ANY SCHOOL BUILDING NOW
37 OR HEREAFTER IN EXISTENCE.

38 S 4. This act shall take effect immediately.