

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, the general municipal law, the state finance law and the education law, in relation to advertisements for bids

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

1 Section 1. Paragraph (c) of subdivision 3 of section 220 of the labor
2 law, as separately amended by chapter 678 of the laws of 2007 and chap-
3 ter 7 of the laws of 2008, is amended to read as follows:
4 (c) It shall be the duty of the fiscal officer, as defined in this
5 section, to ascertain and determine the schedules of supplements to be
6 provided and wages to be paid workers, laborers and mechanics on such
7 public work, prior to the time of the advertisement for bids, and such
8 schedules shall be annexed to and form a part of the specifications for
9 the work. Such fiscal officer shall file with the department having
10 jurisdiction such schedules prior to the time of the commencement of the
11 advertisement for bids on all public works proposed to be constructed.
12 IF THE FISCAL OFFICER CANNOT ASCERTAIN OR DETERMINE SUCH SCHEDULES OR
13 WAGES, OR DISTINGUISH BETWEEN THE CLASSIFICATIONS OF WORKERS ON SUCH
14 PUBLIC WORK, IT SHALL BE THE DUTY OF THE FISCAL OFFICER TO REJECT ANY
15 CONTRACT ASSOCIATED WITH THE ADVERTISEMENT FOR BIDS. The term "contract"
16 as used in this article also shall include reconstruction and repair of
17 any such public work, and any public work performed under a lease,
18 permit or other agreement pursuant to which the department of jurisdic-
19 tion grants the responsibility of contracting for such public work to
20 any third party proposing to perform such work to which the provisions
21 of this article would apply had the department of jurisdiction
22 contracted directly for its performance, or where there is no lease,
23 permit or other agreement and ownership of a public work is intended to

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

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1 be assumed by such public entity at any time subsequent to completion of
2 the public work.

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 onemillion inhabitants or more
23 or any district, board or agency with jurisdiction exclusively therein
24 the use of best value for awarding a purchase contract or purchase
25 contracts must be authorized by local law or, in the case of a district
26 corporation, school district or board of cooperative educational
27 services, by rule, regulation or resolution adopted at a public meeting.
28 ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK CONTRACTS SHALL BE FOR A FIXED-
29 DOLLAR AMOUNT. In any case where a responsible bidder's or responsible
30 offerer's gross price is reducible by an allowance for the value of used
31 machinery, equipment, apparatus or tools to be traded in by a political
32 subdivision, the gross price shall be reduced by the amount of such
33 allowance, for the purpose of determining the best value. In cases
34 where two or more responsible bidders furnishing the required security
35 submit identical bids as to price, such officer, board or agency may
36 award the contract to any of such bidders. Such officer, board or agency
37 may, in his or her or its discretion, reject all bids or offers and
38 readvertise for new bids or offers in the manner provided by this
39 section. In determining whether a purchase is an expenditure within the
40 discretionary threshold amounts established by this subdivision, the
41 officer, board or agency of a political subdivision or of any district
42 therein shall consider the reasonably expected aggregate amount of all
43 purchases of the same commodities, services or technology to be made
44 within the twelve-month period commencing on the date of purchase.
45 Purchases of commodities, services or technology shall not be arti-
46 ficially divided for the purpose of satisfying the discretionary buying
47 thresholds established by this subdivision. A change to or a renewal of
48 a discretionary purchase shall not be permitted if the change or renewal
49 would bring the reasonably expected aggregate amount of all purchases of
50 the same commodities, services or technology from the same provider
51 within the twelve-month period commencing on the date of the first
52 purchase to an amount greater than the discretionary buying threshold
53 amount. For purposes of this section, "sealed bids" and "sealed offers",
54 as that term applies to purchase contracts, (including contracts for
55 service work, but excluding any purchase contracts necessary for the
56 completion of a public works contract pursuant to article eight of the

1 labor law) shall include bids and offers submitted in an electronic
2 format including submission of the statement of non-collusion required
3 by section one hundred three-d of this article, provided that the
4 governing board of the political subdivision or district, by resolution,
5 has authorized the receipt of bids and offers in such format. Submission
6 in electronic format may, for technology contracts only, be required as
7 the sole method for the submission of bids and offers. Bids and offers
8 submitted in an electronic format shall be transmitted by bidders and
9 offerers to the receiving device designated by the political subdivision
10 or district. Any method used to receive electronic bids and offers shall
11 comply with article three of the state technology law, and any rules and
12 regulations promulgated and guidelines developed thereunder and, at a
13 minimum, must (a) document the time and date of receipt of each bid and
14 offer received electronically; (b) authenticate the identity of the
15 sender; (c) ensure the security of the information transmitted; and (d)
16 ensure the confidentiality of the bid or offer until the time and date
17 established for the opening of bids or offers. The timely submission of
18 an electronic bid or offer in compliance with instructions provided for
19 such submission in the advertisement for bids or offers and/or the spec-
20 ifications shall be the responsibility solely of each bidder or offerer
21 or prospective bidder or offerer. No political subdivision or district
22 therein shall incur any liability from delays of or interruptions in the
23 receiving device designated for the submission and receipt of electronic
24 bids and offers.

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

28 1. Except as otherwise expressly provided by an act of the legislature
29 or by a local law adopted prior to September first, nineteen hundred
30 fifty-three, all contracts for public work involving an expenditure of
31 more than thirty-five thousand dollars and all purchase contracts
32 involving an expenditure of more than twenty thousand dollars, shall be
33 awarded by the appropriate officer, board or agency of a political
34 subdivision or of any district therein including but not limited to a
35 soil conservation district to the lowest responsible bidder furnishing
36 the required security after advertisement for sealed bids in the manner
37 provided by this section, provided, however, that purchase contracts
38 (including contracts for service work, but excluding any purchase
39 contracts necessary for the completion of a public works contract pursu-
40 ant to article eight of the labor law) may be awarded on the basis of
41 best value, as defined in section one hundred sixty-three of the state
42 finance law, to a responsive and responsible bidder or offerer in the
43 manner provided by this section except that in a political subdivision
44 other than a city with a population of one million inhabitants or more
45 or any district, board or agency with jurisdiction exclusively therein
46 the use of best value of awarding a purchase contract or purchase
47 contracts must be authorized by local law or, in the case of a district
48 corporation, school district or board of cooperative educational
49 services, by rule, regulation or resolution adopted at a public meeting.
50 ALL SUBMITTED BIDS FOR SUCH PUBLIC WORK CONTRACTS SHALL BE FOR A FIXED-
51 DOLLAR AMOUNT. In determining whether a purchase is an expenditure with-
52 in the discretionary threshold amounts established by this subdivision,
53 the officer, board or agency of a political subdivision or of any
54 district therein shall consider the reasonably expected aggregate amount
55 of all purchases of the same commodities, services or technology to be
56 made within the twelve-month period commencing on the date of purchase.

1 Purchases of commodities, services or technology shall not be arti-
2 ficially divided for the purpose of satisfying the discretionary buying
3 thresholds established by this subdivision. A change to or a renewal of
4 a discretionary purchase shall not be permitted if the change or renewal
5 would bring the reasonably expected aggregate amount of all purchases of
6 the same commodities, services or technology from the same provider
7 within the twelve-month period commencing on the date of the first
8 purchase to an amount greater than the discretionary buying threshold
9 amount. In any case where a responsible bidder's or responsible
10 offerer's gross price is reducible by an allowance for the value of used
11 machinery, equipment, apparatus or tools to be traded in by a political
12 subdivision, the gross price shall be reduced by the amount of such
13 allowance, for the purpose of determining the low bid or best value. In
14 cases where two or more responsible bidders furnishing the required
15 security submit identical bids as to price, such officer, board or agen-
16 cy may award the contract to any of such bidders. Such officer, board or
17 agency may, in his, her or its discretion, reject all bids or offers and
18 readvertise for new bids or offers in the manner provided by this
19 section.

20 S 4. Subdivision 2 of section 103 of the general municipal law, as
21 amended by section 4 of chapter 608 of the laws of 2011, is amended to
22 read as follows:

23 2. Advertisement for bids and offers shall be published in the offi-
24 cial newspaper or newspapers, if any, or otherwise in a newspaper or
25 newspapers designated for such purpose. Such advertisement shall contain
26 a statement of the time when and place where all bids received pursuant
27 to such notice will be publicly opened and read and where the identity
28 of all offerers will be publicly disclosed, and the designation of the
29 receiving device if the political subdivision or district has authorized
30 the receipt of bids and offers in an electronic format. SUCH ADVERTISE-
31 MENT SHALL DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE
32 TYPE OF WORK TO BE PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARA-
33 GRAPH (C) OF SUBDIVISION THREE OF SECTION TWO HUNDRED TWENTY OF THE
34 LABOR LAW. Such board or agency may by resolution designate any officer
35 or employee to open the bids and offers at the time and place specified
36 in the notice. Such designee shall make a record of such bids and offers
37 in such form and detail as the board or agency shall prescribe and pres-
38 ent the same at the next regular or special meeting of such board or
39 agency. All bids received shall be publicly opened and read at the time
40 and place so specified and the identity of all offerers shall be public-
41 ly disclosed at the time and place so specified. At least five days
42 shall elapse between the first publication of such advertisement and the
43 date so specified for the opening and reading of bids and offers.

44 S 5. Subdivision 2 of section 103 of the general municipal law, as
45 amended by section 5 of chapter 608 of the laws of 2011, is amended to
46 read as follows:

47 2. Advertisement for bids and offers shall be published in the offi-
48 cial newspaper or newspapers, if any, or otherwise in a newspaper or
49 newspapers designated for such purpose. Such advertisement shall contain
50 a statement of the time when and place where all bids received pursuant
51 to such notice will be publicly opened and read and where the identity
52 of all offerers will be publicly disclosed. SUCH ADVERTISEMENT SHALL
53 DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK
54 TO BE PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF
55 SUBDIVISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. Such
56 board or agency may by resolution designate any officer or employee to

1 open the bids and offers at the time and place specified in the notice.
2 Such designee shall make a record of such bids and offers in such form
3 and detail as the board or agency shall prescribe and present the same
4 at the next regular or special meeting of such board or agency. All bids
5 received shall be publicly opened and read at the time and place so
6 specified and the identity of all offerers shall be publicly disclosed
7 at the time and place so specified. At least five days shall elapse
8 between the first publication of such advertisement and the date so
9 specified for the opening and reading of bids and offers.

10 S 6. The second undesignated paragraph of section 135 of the state
11 finance law, as amended by section 3 of part MM of chapter 57 of the
12 laws of 2008, is amended to read as follows:

13 Such specifications must be so drawn as to permit separate and inde-
14 pendent bidding upon each of the above three subdivisions of work. All
15 contracts hereafter awarded by the state or a department, board, commis-
16 sioner or officer thereof, for the erection, construction or alteration
17 of buildings, or any part thereof, shall award the three subdivisions of
18 the above specified work separately to responsible and reliable persons,
19 firms or corporations engaged in these classes of work. A contract for
20 one or more buildings in any project shall be awarded to the lowest
21 responsible bidder for all the buildings included in the specifications.

22 ALL SUCH SPECIFICATIONS ISSUED PURSUANT TO THIS ARTICLE SHALL DESCRIBE
23 SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE
24 PERFORMED, AND ENABLE THE BIDDER TO COMPLY WITH PARAGRAPH (C) OF SUBDI-
25 VISION THREE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW. EACH BIDDER
26 FOR ANY PROJECT UNDER THIS ARTICLE SHALL SUBMIT BIDS FOR A FIXED-DOLLAR
27 AMOUNT.

28 S 7. Paragraphs a and d of subdivision 6 of section 2590-p of the
29 education law, paragraph a as added by chapter 738 of the laws of 1988
30 and paragraph d as amended by chapter 91 of the laws of 2002, are
31 amended to read as follows:

32 a. For each project included in an approved five-year educational
33 facilities capital plan, the chancellor shall develop a detailed scope
34 of the project, which shall include the following: (i) the purposes and
35 public to be served, (ii) the programs to be conducted in the facility,
36 (iii) the gross amounts of space and bulk for any building or structure,
37 (iv) identification of the intent to use architectural, engineering or
38 other consultant services and estimated fees for such consultant
39 services (v) the schedule of design and construction, (vi) the total
40 estimated project costs, including costs for site acquisition, prepara-
41 tion and tenant relocation, design, construction and equipment, (vii)
42 maximum estimated expenditures for the project for each fiscal year
43 until its completion, (viii) costs associated with maintenance and oper-
44 ation of the physical plant and (ix) such other information as the chan-
45 cellor shall specify. In the event, a project consists of a program
46 element without identification of the particular education facility at
47 which such project is to be performed, the detailed scope of the project
48 shall specify the nature of the work to be performed, applicable price
49 and quality standards, a list of the schools eligible for such work,
50 annual performance targets and the total estimated costs of such project
51 during each fiscal year until its completion. ALL SUCH ESTIMATED COSTS
52 AND PRICES SHALL BE FOR A FIXED-DOLLAR AMOUNT.

53 d. For projects to be funded pursuant to subdivision four of this
54 section, the chancellor shall transmit the detailed scope of each such
55 project to the director of management and budget of the city for
56 approval.

(i) Except as provided in paragraph b of this subdivision, no expenses shall be incurred by the city board or the authority for any such project prior to approval of the detailed scope of any such project. SUCH DETAILED SCOPE OF THE PROJECT SHALL DESCRIBE SPECIFICALLY THE NATURE OF THE WORK, INCLUDING THE TYPE OF WORK TO BE PERFORMED.

(ii) No detailed scope of project shall be approved unless the total estimated costs of such project, together with the aggregate estimated costs of all projects for which a detailed scope has theretofore been approved, are within city capital budget appropriations available therefor. A detailed scope of project that is not disapproved by the director of management and budget within thirty days of its submission shall be deemed approved. To the extent the director disapproves all or part of a scope, he or she shall set forth in writing the reasons therefor.

(iii) Upon approval of the detailed scope of project, the chancellor shall refer such project to the New York city school construction authority for implementation in accordance with an agreement between the authority and the city board and shall transmit the approved project scope to the comptroller, whereupon the total estimated costs of such project as set forth in such approved project scope shall be available for expenditure. ALL SUCH ESTIMATED COSTS SHALL BE FOR A FIXED-DOLLAR AMOUNT.

(iv) Approval of the director of management and budget shall be required for any material change in the approved detailed scope of project or for any increase in the total cost of such project in excess of any reserve provided in the approved detailed scope of project. Such approval shall be given or deemed given in the manner provided herein.

(v) The provisions of this paragraph shall not apply to emergency projects undertaken pursuant to paragraph h of subdivision two of this section, the estimated costs of which, together with the costs of other projects undertaken pursuant to said paragraph h, does not exceed the amount set forth in the educational facilities capital plan for activities pursuant to paragraph h of subdivision two of this section.

S 8. This act shall take effect on the ninetieth day after it shall have become a law, provided however, that the amendments to subdivision 1 of section 103 of the general municipal law made by section two of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision (a) of section 41 of part X of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of section three of this act shall take effect, provided further, that the amendments to subdivision 2 of section 103 of the general municipal law made by section four of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision (a) of section 41 of part X of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of section five of this act shall take effect; provided, further, that the amendments to paragraph d of subdivision 6 of section 2590-p of the education law made by section seven of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith.