

3564--A

2013-2014 Regular Sessions

I N   S E N A T E

February 5, 2013

---

Introduced by Sens. BONACIC, ADDABBO -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, the state finance law and the general municipal law, in relation to labor performed under certain public work contracts

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

- 1     Section 1. Subdivision 5 of section 220 of the labor law is amended by  
2     adding a new paragraph m to read as follows:  
3     M. "JOB ORDER CONTRACT" SHALL MEAN A COMPETITIVE BID, INDEFINITE QUAN-  
4     TITY, FIXED PRICE, MULTI-TASK CONTRACT, WHERE A BASE CONTRACT IS AWARDED  
5     WITH PRE-ESTABLISHED TASKS AND PRICES, SPECIFICATIONS AND GENERAL  
6     CONTRACT CONDITIONS. CONTRACTORS ARE PERMITTED TO BID BY SUBMITTING A  
7     COEFFICIENT OR COEFFICIENTS FOR A JOB ORDER CONTRACT BASED ON A UNIT  
8     PRICE BOOK, WHICH CONTAINS A LIST OF ALL TASKS THAT MAY BE PERFORMED AS  
9     PART OF THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT. SUCH  
10    CONTRACTS MUST BE FILED WITH THE COMMISSIONER BY THE DEPARTMENT OF  
11    JURISDICTION AND MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER SUCH  
12    CONTRACT IS PURSUANT TO THIS SECTION.  
13    S 2. The state finance law is amended by adding a new section 148 to  
14    read as follows:  
15    S 148. JOB ORDER CONTRACTS. 1. "JOB ORDER CONTRACT", SHALL HAVE THE  
16    SAME MEANING AS SET FORTH IN PARAGRAPH M OF SUBDIVISION FIVE OF SECTION  
17    TWO HUNDRED TWENTY OF THE LABOR LAW.  
18    2. THE JOB ORDER CONTRACT MUST HAVE A DEFINED SCOPE OF WORK, WHICH  
19    INCLUDES:  
20    A. A LIMITATION TO ONE OF THE GEOGRAPHIC REGIONS COMMONLY REFERRED TO  
21    AS THE CAPITAL DISTRICT, MOHAWK VALLEY, HUDSON VALLEY, CENTRAL NEW YORK,

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

LBD08603-03-3

1 FINGER LAKES, WESTERN NEW YORK, SOUTHERN TIER, NORTH COUNTRY, LONG  
2 ISLAND OR NEW YORK CITY;

3 B. IDENTIFICATION OF TRADES RELEVANT FOR THE SPECIFIC SCOPE OF WORK  
4 TO BE PERFORMED, INCLUDING BUT NOT LIMITED TO:

5 (I) BASIC TRADES, INCLUDING CARPENTERS, LABORERS AND BRICKLAYERS,

6 (II) PLUMBING AND GAS FITTING,

7 (III) STEAM HEATING, HOT WATER HEATING, VENTILATING AND AIR CONDITION-  
8 ING APPARATUS,

9 (IV) ELECTRIC WIRING AND STANDARD ILLUMINATING FIXTURES,

10 (V) ROOFING,

11 (VI) WELDING,

12 (VII) IRONWORK,

13 (VIII) CONCRETE FINISHING, OR

14 (IX) PAINTING AND PLASTERING; AND

15 C. A DETAILED DESCRIPTION OF THE WORK TO BE PERFORMED UNDER THE BASE  
16 CONTRACT, A LIST OF THE TASKS NECESSARY TO COMPLETE THE WORK TO BE  
17 PERFORMED UNDER THE BASE CONTRACT AND THE TRADE CLASSIFICATIONS OF THE  
18 WORKERS, MECHANICS AND LABORERS WHO WILL PERFORM EACH OF THE LISTED  
19 TASKS IN THE BASE CONTRACT.

20 3. THE DEFINED SCOPE OF WORK TO BE PERFORMED UNDER THE BASE CONTRACT  
21 MUST NOT BE OVERLY BROAD SO AS TO PREVENT THE CONTRACTOR FROM MAKING AN  
22 INFORMED BID DURING THE COMPETITIVE BID PROCESS. THE CONTRACTING ENTITY  
23 MUST LIMIT THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT TO THOSE  
24 PRE-ESTABLISHED TASKS AND PRICES REFERRED TO IN THE GENERAL CONTRACT  
25 CONDITIONS.

26 4. BEFORE SOLICITING BIDS FOR THE BASE CONTRACT, THE CONTRACTING ENTI-  
27 TY SHALL FILE ALL INFORMATION REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH  
28 A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW  
29 WITH THE FISCAL OFFICER. THE CONTRACTING ENTITY MAY NOT SOLICIT BIDS FOR  
30 THE CONTRACT UNTIL ALL REQUIREMENTS OF SUBPARAGRAPH (I) OF PARAGRAPH A  
31 OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW  
32 HAVE BEEN SATISFIED.

33 5. THE COST OF A JOB ORDER CONTRACT MAY NOT EXCEED FIVE HUNDRED THOU-  
34 SAND DOLLARS. SUCH CONTRACT IS LIMITED TO ONE YEAR AND MAY BE RENEWED  
35 FOR AN ADDITIONAL TWELVE MONTHS TWICE SO LONG AS THE FIVE HUNDRED THOU-  
36 SAND DOLLAR THRESHOLD HAS NOT BEEN REACHED. IT IS IMPERMISSIBLE TO  
37 SUBDIVIDE A CONTRACT INTO SEPARATE CONTRACTS IN ORDER TO MEET THE  
38 REQUIREMENTS OF THIS SUBDIVISION. THE RESTRICTIONS IN THIS SUBDIVISION  
39 SHALL NOT APPLY WHERE THE PUBLIC OWNER REQUIRES A PROJECT LABOR AGREE-  
40 MENT CONSISTENT WITH PROVISIONS OF SECTION TWO HUNDRED TWENTY-TWO OF THE  
41 LABOR LAW.

42 6. THE JOB ORDER CONTRACT AND ALL SUBCONTRACTS ASSOCIATED WITH SUCH  
43 JOB ORDER CONTRACT MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER  
44 SUCH CONTRACTS IS PURSUANT TO SECTION TWO HUNDRED TWENTY OF THE LABOR  
45 LAW.

46 7. THESE REQUIREMENTS APPLY TO ALL JOB ORDER CONTRACTS ISSUED BY A  
47 STATE AGENCY, AS DEFINED BY SUBDIVISION THREE OF SECTION TWO-A OF THIS  
48 CHAPTER, A COVERED AUTHORITY, AS DEFINED BY SUBDIVISION SIX OF SECTION  
49 TWO-A OF THIS CHAPTER, THE NEW YORK CITY HOUSING AUTHORITY, ESTABLISHED  
50 UNDER TITLE ONE OF ARTICLE THIRTEEN OF THE PUBLIC HOUSING LAW, AND THE  
51 NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY, ESTABLISHED UNDER TITLE SIX  
52 OF ARTICLE EIGHT OF THE PUBLIC AUTHORITIES LAW. ALL SUCH ENTITIES MUST  
53 LIMIT ASSIGNMENT UNDER CONTRACTS ISSUED PURSUANT TO THIS SECTION TO A  
54 MINORITY PORTION OF ITS ANNUAL CAPITAL BUDGET, IF SUCH BUDGET EXISTS.

55 8. IF AN ENTITY DESCRIBED IN SUBDIVISION SEVEN OF THIS SECTION SEEKS A  
56 THIRD PARTY CONSULTANT TO ASSIST, IN ANY MANNER, WITH THE BIDDING AND/OR

IMPLEMENTATION OF A JOB ORDER CONTRACT, SUCH THIRD PARTY CONSULTANT MUST BE SELECTED PURSUANT TO A COMPETITIVE BID PROCESS.

9. THIS SECTION SHALL NOT APPLY NOR RESTRICT THE USE OF JOB ORDER CONTRACTS:

A. IN ANY RECONSTRUCTION, REPAIR, REHABILITATION, OR MAINTENANCE EFFORTS ASSOCIATED WITH DAMAGES FROM THE TWO THOUSAND TWELVE STORM, COMMONLY KNOWN AS HURRICANE SANDY, OR

B. DURING ANY "STATE DISASTER EMERGENCY" THE RECONSTRUCTION, REPAIR, REHABILITATION, OR MAINTENANCE EFFORTS RESULTING FROM A NATURAL OR MAN MADE "DISASTER" AS SUCH TERMS ARE DEFINED UNDER SUBDIVISION TWO OF SECTION TWENTY OF THE EXECUTIVE LAW.

S 3. The general municipal law is amended by adding a new section 103-h to read as follows:

S 103-H. JOB ORDER CONTRACTS. 1. "JOB ORDER CONTRACT", SHALL HAVE THE SAME MEANING AS SET FORTH IN PARAGRAPH M OF SUBDIVISION FIVE OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW.

2. THE JOB ORDER CONTRACT MUST HAVE A DEFINED SCOPE OF WORK, WHICH INCLUDES:

A. A LIMITATION TO ONE OF THE GEOGRAPHIC REGIONS COMMONLY REFERRED TO AS THE CAPITAL DISTRICT, MOHAWK VALLEY, HUDSON VALLEY, CENTRAL NEW YORK, FINGER LAKES, WESTERN NEW YORK, SOUTHERN TIER, NORTH COUNTRY, LONG ISLAND OR NEW YORK CITY;

B. IDENTIFICATION OF TRADES RELEVANT FOR THE SPECIFIC SCOPE OF WORK TO BE PERFORMED, INCLUDING BUT NOT LIMITED TO:

(I) BASIC TRADES, INCLUDING CARPENTERS, LABORERS AND BRICKLAYERS,

(II) PLUMBING AND GAS FITTING,

(III) STEAM HEATING, HOT WATER HEATING, VENTILATING AND AIR CONDITIONING APPARATUS,

(IV) ELECTRIC WIRING AND STANDARD ILLUMINATING FIXTURES,

(V) ROOFING,

(VI) WELDING,

(VII) IRONWORK,

(VIII) CONCRETE FINISHING, OR

(IX) PAINTING AND PLASTERING; AND

C. A DETAILED DESCRIPTION OF THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT, A LIST OF THE TASKS NECESSARY TO COMPLETE THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT AND THE TRADE CLASSIFICATIONS OF THE WORKERS, MECHANICS AND LABORERS WHO WILL PERFORM EACH OF THE LISTED TASKS IN THE BASE CONTRACT.

3. THE DEFINED SCOPE OF WORK TO BE PERFORMED UNDER THE BASE CONTRACT MUST NOT BE OVERLY BROAD SO AS TO PREVENT THE CONTRACTOR FROM MAKING AN INFORMED BID DURING THE COMPETITIVE BID PROCESS. THE CONTRACTING ENTITY MUST LIMIT THE WORK TO BE PERFORMED UNDER THE BASE CONTRACT TO THOSE PRE-ESTABLISHED TASKS AND PRICES REFERRED TO IN THE GENERAL CONTRACT CONDITIONS.

4. BEFORE SOLICITING BIDS FOR THE BASE CONTRACT, THE CONTRACTING ENTITY SHALL FILE ALL INFORMATION REQUIRED BY SUBPARAGRAPH (I) OF PARAGRAPH A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW WITH THE FISCAL OFFICER. THE CONTRACTING ENTITY MAY NOT SOLICIT BIDS FOR THE BASE CONTRACT UNTIL ALL REQUIREMENTS OF SUBPARAGRAPH (I) OF PARAGRAPH A OF SUBDIVISION THREE-A OF SECTION TWO HUNDRED TWENTY OF THE LABOR LAW HAVE BEEN SATISFIED.

5. THE COST OF A JOB ORDER CONTRACT MAY NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS. SUCH CONTRACT IS LIMITED TO ONE YEAR AND MAY BE RENEWED FOR AN ADDITIONAL TWELVE MONTHS TWICE SO LONG AS THE FIVE HUNDRED THOUSAND DOLLAR THRESHOLD HAS NOT BEEN REACHED. IT IS IMPERMISSIBLE TO

1 SUBDIVIDE A CONTRACT INTO SEPARATE CONTRACTS IN ORDER TO MEET THE  
2 REQUIREMENTS OF THIS SUBDIVISION. THE RESTRICTIONS IN THIS SUBDIVISION  
3 SHALL NOT APPLY WHERE THE PUBLIC OWNER REQUIRES A PROJECT LABOR AGREE-  
4 MENT CONSISTENT WITH PROVISIONS OF SECTION TWO HUNDRED TWENTY-TWO OF THE  
5 LABOR LAW.

6 6. THE JOB ORDER CONTRACT AND ALL SUBCONTRACTS ASSOCIATED WITH SUCH  
7 JOB ORDER CONTRACT MUST EXPRESSLY STATE THAT ALL WORK PERFORMED UNDER  
8 SUCH CONTRACTS IS PURSUANT TO SECTION TWO HUNDRED TWENTY OF THE LABOR  
9 LAW.

10 7. THESE REQUIREMENTS APPLY TO ALL POLITICAL SUBDIVISIONS. ALL SUCH  
11 POLITICAL SUBDIVISIONS MUST LIMIT ASSIGNMENTS UNDER CONTRACTS ISSUED  
12 PURSUANT TO THIS SECTION TO A MINORITY PORTION OF ITS ANNUAL CAPITAL  
13 BUDGET, IF SUCH BUDGET EXISTS.

14 8. IF A POLITICAL SUBDIVISION SEEKS A THIRD PARTY CONSULTANT TO  
15 ASSIST, IN ANY MANNER, WITH THE BIDDING AND/OR IMPLEMENTATION OF A JOB  
16 ORDER CONTRACT, SUCH THIRD PARTY CONSULTANT MUST BE SELECTED PURSUANT TO  
17 A COMPETITIVE BID PROCESS.

18 9. THIS SECTION SHALL NOT APPLY NOR RESTRICT THE USE OF JOB ORDER  
19 CONTRACTS:

20 A. IN ANY RECONSTRUCTION, REPAIR, REHABILITATION, OR MAINTENANCE  
21 EFFORTS ASSOCIATED WITH DAMAGES FROM THE TWO THOUSAND TWELVE STORM,  
22 COMMONLY KNOWN AS HURRICANE SANDY, OR

23 B. DURING ANY "STATE DISASTER EMERGENCY" THE RECONSTRUCTION, REPAIR,  
24 REHABILITATION, OR MAINTENANCE EFFORTS RESULTING FROM A NATURAL OR MAN-  
25 MADE "DISASTER" AS SUCH TERMS ARE DEFINED UNDER SUBDIVISION TWO OF  
26 SECTION TWENTY OF THE EXECUTIVE LAW.

27 S 4. This act shall take effect immediately and shall apply to all job  
28 order contracts solicited or renewed on or after such effective date.