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

4438--A

Cal. No. 727

2013-2014 Regular Sessions

I N S E N A T E

April 1, 2013

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the state finance law, in relation to arbitration provisions in state contracts

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

Section 1. Section 165 of the state finance law is amended by adding a new subdivision 9 to read as follows:

9. ARBITRATION PROVISION. A. FOR THE PURPOSES OF THIS SUBDIVISION "ARBITRATION PROVISIONS" SHALL MEAN ANY REQUIREMENT THAT AN EMPLOYEE OR INDEPENDENT CONTRACTOR PERFORMING WORK UNDER SUCH VENDOR'S CONTRACT OR SUBCONTRACT TO SUBMIT CLAIMS ARISING UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 OR ARTICLE FIFTEEN OF THE EXECUTIVE LAW TO PRIVATE ARBITRATION FOR RESOLUTION; THIS SHALL NOT INCLUDE ARBITRATION THAT IS MANDATED BY A COLLECTIVE BARGAINING AGREEMENT BETWEEN SUCH VENDOR AND EMPLOYEE AND/OR INDEPENDENT CONTRACTOR.

B. (I) WITH RESPECT TO CONTRACTS DESCRIBED IN SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH, AND IN ACCORDANCE WITH SUCH SUBPARAGRAPHS, STATE AGENCIES AS DEFINED IN THIS ARTICLE SHALL NOT CONTRACT FOR THE SUPPLY OF COMMODITIES, SERVICE OR CONSTRUCTION WITH ANY CONTRACTOR WHO DOES NOT AGREE TO STIPULATE TO THE FOLLOWING, IF THERE IS ANOTHER CONTRACTOR WHO WILL CONTRACT TO SUPPLY COMMODITIES, SERVICES OR CONSTRUCTION OF COMPARABLE QUALITY AT A COMPARABLE PRICE OR COST: THE CONTRACTOR SHALL NOT PLACE ANY ARBITRATION PROVISION UPON THEIR EMPLOYEES THAT WORK ON SUCH CONTRACT.

(II) IN THE CASE OF CONTRACTS LET BY A COMPETITIVE PROCESS, WHENEVER THE RESPONSIVE AND RESPONSIBLE OFFERER HAVING THE LOWEST PRICE OR BEST

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

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VALUE OFFER HAS NOT AGREED TO STIPULATE TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION AND ANOTHER RESPONSIVE AND RESPONSIBLE OFFERER WHO HAS AGREED TO STIPULATE TO SUCH CONDITIONS HAS SUBMITTED AN OFFER WITHIN FIVE PERCENT OF THE LOWEST PRICE OR BEST VALUE OFFER FOR A CONTRACT TO SUPPLY COMMODITIES, SERVICES OR CONSTRUCTION OF COMPARABLE QUALITY, THE CONTRACTING ENTITY SHALL REFER SUCH OFFERS TO THE COMMISSIONER OF GENERAL SERVICES, WHO MAY DETERMINE, IN ACCORDANCE WITH APPLICABLE LAW AND RULES, THAT IT IS IN THE BEST INTEREST OF THE STATE THAT THE CONTRACT BE AWARDED TO OTHER THAN THE LOWEST PRICE OR BEST VALUE OFFER.

(III) IN THE CASE OF CONTRACTS LET BY OTHER THAN A COMPETITIVE PROCESS FOR GOODS OR SERVICES INVOLVING AN EXPENDITURE OF AN AMOUNT GREATER THAN THE DISCRETIONARY BUYING THRESHOLD AS SPECIFIED IN SECTION ONE HUNDRED SIXTY-THREE OF THIS ARTICLE, OR FOR CONSTRUCTION INVOLVING AN AMOUNT GREATER THAN FIFTEEN THOUSAND DOLLARS, THE CONTRACTING ENTITY SHALL NOT AWARD TO A PROPOSED CONTRACTOR WHO HAS NOT AGREED TO STIPULATE TO THE CONDITIONS SET FORTH IN THIS SUBDIVISION UNLESS THE ENTITY SEEKING TO USE THE COMMODITIES, SERVICES OR CONSTRUCTION DETERMINES THAT THE COMMODITIES, SERVICES OR CONSTRUCTION ARE NECESSARY FOR THE ENTITY TO PERFORM ITS FUNCTIONS AND THERE IS NO OTHER RESPONSIBLE CONTRACTOR WHO WILL SUPPLY COMMODITIES, SERVICES OR CONSTRUCTION OF COMPARABLE QUALITY AT A COMPARABLE PRICE. SUCH DETERMINATIONS SHALL BE MADE IN WRITING AND SHALL BE PUBLIC DOCUMENTS.

C. UPON RECEIVING INFORMATION THAT A CONTRACTOR WHO HAS MADE THE STIPULATION REQUIRED BY THIS SUBDIVISION IS IN VIOLATION THEREOF, THE CONTRACTING ENTITY SHALL REVIEW SUCH INFORMATION AND OFFER THE CONTRACTOR AN OPPORTUNITY TO RESPOND. IF THE CONTRACTING ENTITY FINDS THAT A VIOLATION HAS OCCURRED, IT SHALL TAKE SUCH ACTION AS MAY BE APPROPRIATE AND PROVIDED FOR BY LAW, RULE OR CONTRACT, INCLUDING, BUT NOT LIMITED TO, IMPOSING SANCTIONS, SEEKING COMPLIANCE, RECOVERING DAMAGES OR DECLARING THE CONTRACTOR IN DEFAULT.

D. AS USED IN THIS SUBDIVISION, THE TERM "CONTRACT" SHALL NOT INCLUDE CONTRACTS WITH GOVERNMENTAL AND NON-PROFIT ORGANIZATIONS, CONTRACTS AWARDED PURSUANT TO EMERGENCY PROCUREMENT PROCEDURES OR CONTRACTS, RESOLUTIONS, INDENTURES, DECLARATIONS OF TRUST OR OTHER INSTRUMENTS AUTHORIZING OR RELATING TO THE AUTHORIZATION, ISSUANCE, AWARD, SALE OR PURCHASE OF BONDS, CERTIFICATES OF INDEBTEDNESS, NOTES OR OTHER FISCAL OBLIGATIONS, PROVIDED THAT THE POLICIES OF THIS SUBDIVISION SHALL BE CONSIDERED WHEN SELECTING A CONTRACTOR TO PROVIDE FINANCIAL OR LEGAL ADVICE, AND WHEN SELECTING MANAGING UNDERWRITERS IN CONNECTION WITH SUCH ACTIVITIES.

S 2. This act shall take effect immediately and shall apply to all contracts signed and executed on or after such effective date.