

5065--B

2013-2014 Regular Sessions

I N   S E N A T E

May 7, 2013

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Introduced by Sen. LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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

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

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1 five hundred thousand dollars in all other counties within the state,  
2 separate specifications shall be prepared for the following three subdivi-  
3 sions of the work to be performed:

4 a. Plumbing and gas fitting;

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

7 c. Electric wiring and standard illuminating fixtures.

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

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

1 NIKUES AVAILABLE, AND MAXIMIZATION OF STATE BUILDING AID, AND SUCH A  
2 CONTRACT MAY BE ENTERED INTO PURSUANT TO THE FOLLOWING PROVISIONS FOR  
3 THE AWARD OF A CONTRACT BASED ON EVALUATION OF PROPOSALS SUBMITTED IN  
4 RESPONSE TO A REQUEST FOR PROPOSALS PREPARED BY OR FOR THE FUND:

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

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

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

53 D. THE FUND MAY MAKE A CONTRACT AWARD TO ANY RESPONSIBLE PROPOSER  
54 SELECTED BASED ON A DETERMINATION BY THE FUND THAT THE SELECTED  
55 PROPOSAL IS MOST RESPONSIVE TO THE REQUEST FOR PROPOSALS AND MAY NEGOTI-  
56 ATE WITH ANY PROPOSER; PROVIDED, HOWEVER, THAT IF AN AWARD IS MADE TO

1 ANY PROPOSER WHOSE TOTAL PROPOSAL DOES NOT PROVIDE THE LOWEST NET COST,  
2 TAKING INTO ACCOUNT THE MAXIMIZATION OF STATE BUILDING AID, THE FUND  
3 SHALL ADOPT A RESOLUTION AFTER PUBLIC HEARING WHICH INCLUDES PARTICULAR-  
4 IZED FINDINGS RELEVANT TO FACTORS EVALUATED, INDICATING THAT THE FUND'S  
5 REQUIREMENTS ARE MET BY SUCH AWARD AND THAT SUCH ACTION IS IN THE PUBLIC  
6 INTEREST. SUCH CONTRACT MAY BE A SINGLE GUARANTEED MAXIMUM PRICE  
7 CONTRACT OR UTILIZE A FULL CONSTRUCTION MANAGEMENT CONTRACT APPROACH OR  
8 OTHER APPROPRIATE APPROACH TO DESIGNING AND CONSTRUCTING THE PROJECT.

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

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

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

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

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

39 S 4. This act shall take effect immediately.