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

5065--B

2013-2014 Regular Sessions

I N S E N A T E

May 7, 2013

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:

Section 1. Subdivisions 1, 2 and 2-a of section 482 of the education law, subdivision 1 as added by chapter 931 of the laws of 1971, subdivisions 2 as amended and 2-a as added by section 6 of part MM of chapter 57 of the laws of 2008, are amended to read as follows:

1. [Any contract let by the fund or by any letting agency on behalf of the fund for the construction, reconstruction, rehabilitation or improvement of a combined occupancy structure or of the school portion thereof, shall be in conformity with the provisions of section one hundred one of the general municipal law.

2. Except as otherwise provided in section two hundred twenty-two of the labor law, every contract, lease or other agreement entered into by or on behalf of the fund for the acquisition, lease, construction, reconstruction, rehabilitation or improvement of any combined occupancy structure shall contain a provision that, when the entire cost of any such contemplated construction, reconstruction, rehabilitation or improvement shall exceed three million dollars in the counties of the Bronx, Kings, New York, Queens, and Richmond; one million five hundred 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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five hundred thousand dollars in all other counties within the state, separate specifications shall be prepared for the following three subdivisions of the work to be performed:

a. Plumbing and gas fitting;

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

c. Electric wiring and standard illuminating fixtures.

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

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

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

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

B. PRIOR TO THE ISSUANCE OF A REQUEST FOR PROPOSALS PURSUANT TO THIS SECTION, THE FUND SHALL PUBLISH A NOTICE OF SUCH ISSUANCE IN THE OFFICIAL NEWSPAPER OF THE CITY, IF ANY, AND IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION. CONCURRENT WITH THE PUBLICATION OF SUCH NOTICE, A DRAFT REQUEST FOR PROPOSALS SHALL BE FILED WITH THE FUND. AFTER ALLOWING A THIRTY DAY COMMENT PERIOD AND AN ADDITIONAL TEN DAYS TO REVIEW SUCH COMMENTS, THE FUND MAY PUBLISH THE FINAL REQUEST FOR PROPOSALS AND, CONCURRENT WITH SUCH PUBLICATION, SHALL PUBLISH A NOTICE OF SUCH ISSUANCE IN THE MANNER SPECIFIED IN THIS PARAGRAPH. CONCURRENT WITH THE PUBLICATION OF THE FINAL REQUEST FOR PROPOSALS, A SET OF COMMENTS FILED IN RELATION TO THE DRAFT REQUEST FOR PROPOSALS AND FINDINGS RELATED TO THE SUBSTANTIVE ELEMENTS OF SUCH COMMENTS SHALL BE FILED ALONG WITH THE REQUEST FOR PROPOSALS WITH THE FUND AND IN THE PUBLIC LIBRARY OR LIBRARIES IN PROXIMITY TO THE PROPOSED COMBINED OCCUPANCY STRUCTURE OR SCHOOL BUILDING SITE.

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

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

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

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

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

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

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

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

S 4. This act shall take effect immediately.