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

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I N A S S E M B L Y

May 12, 2016

Introduced by M. of A. CUSICK, COOK, QUART, SEPULVEDA -- Multi-Sponsored by -- M. of A. BLAKE, MAGEE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public authorities law, the general municipal law, the public service law and the state finance law, in relation to notice provisions in public works contracts

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

Section 1. The public authorities law is amended by adding a new section 2882 to read as follows:

S 2882. NOTICE PROVISIONS IN PUBLIC WORKS CONTRACTS. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "PUBLIC OWNER" SHALL MEAN ANY STATE OR LOCAL AUTHORITY, AS DEFINED BY SECTION TWO OF THIS CHAPTER.

(B) "CONTRACT" SHALL MEAN ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR OR MAINTENANCE OF ANY PUBLIC WORK PROJECT.

(C) "CONTRACTOR" SHALL MEAN ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION, COMPANY, SUB-CONTRACTOR, MATERIALMAN SECURED BY A CONTRACTOR OR A SUBCONTRACTOR, OR OTHER ENTITY OR COMBINATION THEREOF, WHICH ENTERS INTO A CONTRACT TO PROVIDE SERVICES TO A PUBLIC OWNER.

(D) "MATERIALLY PREJUDICE" SHALL MEAN TO SUBSTANTIALLY IMPAIR THE ABILITY OF THE PUBLIC OWNER TO INVESTIGATE OR DEFEND THE CLAIM, PROVIDED THAT THE PUBLIC OWNER'S ACTUAL KNOWLEDGE OF THE EVENTS IN QUESTION SHALL PRECLUDE A CLAIM OF MATERIAL PREJUDICE DUE TO LACK OF ANY REQUIRED NOTICE.

2. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR ANY PUBLIC WORK PROJECT SHALL CONTAIN, OR BE PRESUMED TO CONTAIN, THE FOLLOWING PROVISION OR A PROVISION THAT IS EQUALLY FAVORABLE TO THE CONTRACTOR:

THE FAILURE TO GIVE ANY NOTICE REQUIRED TO BE GIVEN BY SUCH CONTRACT WITHIN THE TIME PRESCRIBED THEREIN SHALL NOT INVALIDATE ANY CLAIM MADE BY THE CONTRACTOR OR ANY OTHER CLAIMANT, UNLESS THE FAILURE TO PROVIDE TIMELY NOTICE HAS MATERIALLY PREJUDICED THE PUBLIC OWNER.

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

LBD14070-02-6

3. IN ANY ACTION IN WHICH A PUBLIC OWNER ALLEGES THAT IT WAS MATERIALLY PREJUDICED AS A RESULT OF A FAILURE TO PROVIDE TIMELY NOTICE, THE BURDEN OF PROOF SHALL BE ON:

(A) THE PUBLIC OWNER TO PROVE THAT IT HAS BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED WITHIN ONE HUNDRED EIGHTY DAYS OF THE TIME REQUIRED UNDER THE CONTRACT; OR

(B) THE CONTRACTOR OR ANY OTHER CLAIMANT, TO PROVE THAT THE PUBLIC OWNER HAS NOT BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED MORE THAN ONE HUNDRED EIGHTY DAYS AFTER THE TIME REQUIRED UNDER THE CONTRACT.

S 2. The general municipal law is amended by adding a new section 109-c to read as follows:

S 109-C. NOTICE PROVISIONS IN PUBLIC WORKS CONTRACTS. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "PUBLIC OWNER" SHALL MEAN ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, SCHOOL DISTRICT, DISTRICT CORPORATION OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES.

(B) "CONTRACT" SHALL MEAN ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR OR MAINTENANCE OF ANY PUBLIC WORK PROJECT.

(C) "CONTRACTOR" SHALL MEAN ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION, COMPANY, SUB-CONTRACTOR, MATERIALMAN SECURED BY A CONTRACTOR OR A SUBCONTRACTOR, OR OTHER ENTITY OR COMBINATION THEREOF, WHICH ENTERS INTO A CONTRACT TO PROVIDE SERVICES TO A PUBLIC OWNER.

(D) "MATERIALLY PREJUDICE" SHALL MEAN TO SUBSTANTIALLY IMPAIR THE ABILITY OF THE PUBLIC OWNER TO INVESTIGATE OR DEFEND THE CLAIM, PROVIDED THAT THE PUBLIC OWNER'S ACTUAL KNOWLEDGE OF THE EVENTS IN QUESTION SHALL PRECLUDE A CLAIM OF MATERIAL PREJUDICE DUE TO LACK OF ANY REQUIRED NOTICE.

2. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR ANY PUBLIC WORK PROJECT SHALL CONTAIN, OR BE PRESUMED TO CONTAIN, THE FOLLOWING PROVISION OR A PROVISION THAT IS EQUALLY FAVORABLE TO THE CONTRACTOR:

THE FAILURE TO GIVE ANY NOTICE REQUIRED TO BE GIVEN BY SUCH CONTRACT WITHIN THE TIME PRESCRIBED THEREIN SHALL NOT INVALIDATE ANY CLAIM MADE BY THE CONTRACTOR OR ANY OTHER CLAIMANT, UNLESS THE FAILURE TO PROVIDE TIMELY NOTICE HAS MATERIALLY PREJUDICED THE PUBLIC OWNER.

3. IN ANY ACTION IN WHICH A PUBLIC OWNER ALLEGES THAT IT WAS MATERIALLY PREJUDICED AS A RESULT OF A FAILURE TO PROVIDE TIMELY NOTICE, THE BURDEN OF PROOF SHALL BE ON:

(A) THE PUBLIC OWNER TO PROVE THAT IT HAS BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED WITHIN ONE HUNDRED EIGHTY DAYS OF THE TIME REQUIRED UNDER THE CONTRACT; OR

(B) THE CONTRACTOR OR ANY OTHER CLAIMANT, TO PROVE THAT THE PUBLIC OWNER HAS NOT BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED MORE THAN ONE HUNDRED EIGHTY DAYS AFTER THE TIME REQUIRED UNDER THE CONTRACT.

S 3. The public service law is amended by adding a new section 28 to read as follows:

S 28. NOTICE PROVISIONS IN PUBLIC WORKS CONTRACTS. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "PUBLIC OWNER" SHALL MEAN THE STATE, OR ANY STATE AGENCY, PUBLIC DEPARTMENT, PUBLIC CORPORATION, BOARD, BUREAU, OR SUBDIVISION THEREOF, ANY PUBLIC BENEFIT CORPORATION, OR A COMMISSION APPOINTED PURSUANT TO LAW.

(B) "CONTRACT" SHALL MEAN ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR OR MAINTENANCE OF ANY PUBLIC WORK PROJECT.

(C) "CONTRACTOR" SHALL MEAN ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION, COMPANY, SUB-CONTRACTOR, MATERIALMAN SECURED BY A CONTRACTOR OR A SUBCONTRACTOR, OR OTHER ENTITY OR COMBINATION THEREOF, WHICH ENTERS INTO A CONTRACT TO PROVIDE SERVICES TO A PUBLIC OWNER.

(D) "MATERIALLY PREJUDICE" SHALL MEAN TO SUBSTANTIALLY IMPAIR THE ABILITY OF THE PUBLIC OWNER TO INVESTIGATE OR DEFEND THE CLAIM, PROVIDED THAT THE PUBLIC OWNER'S ACTUAL KNOWLEDGE OF THE EVENTS IN QUESTION SHALL PRECLUDE A CLAIM OF MATERIAL PREJUDICE DUE TO LACK OF ANY REQUIRED NOTICE.

2. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR ANY PUBLIC WORK PROJECT SHALL CONTAIN, OR BE PRESUMED TO CONTAIN, THE FOLLOWING PROVISION OR A PROVISION THAT IS EQUALLY FAVORABLE TO THE CONTRACTOR:

THE FAILURE TO GIVE ANY NOTICE REQUIRED TO BE GIVEN BY SUCH CONTRACT WITHIN THE TIME PRESCRIBED THEREIN SHALL NOT INVALIDATE ANY CLAIM MADE BY THE CONTRACTOR OR ANY OTHER CLAIMANT, UNLESS THE FAILURE TO PROVIDE TIMELY NOTICE HAS MATERIALLY PREJUDICED THE PUBLIC OWNER.

3. IN ANY ACTION IN WHICH A PUBLIC OWNER ALLEGES THAT IT WAS MATERIALLY PREJUDICED AS A RESULT OF A FAILURE TO PROVIDE TIMELY NOTICE, THE BURDEN OF PROOF SHALL BE ON:

(A) THE PUBLIC OWNER TO PROVE THAT IT HAS BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED WITHIN ONE HUNDRED EIGHTY DAYS OF THE TIME REQUIRED UNDER THE CONTRACT; OR

(B) THE CONTRACTOR OR ANY OTHER CLAIMANT, TO PROVE THAT THE PUBLIC OWNER HAS NOT BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED MORE THAN ONE HUNDRED EIGHTY DAYS AFTER THE TIME REQUIRED UNDER THE CONTRACT.

S 4. The state finance law is amended by adding a new section 179-ff to read as follows:

S 179-FF. NOTICE PROVISIONS IN PUBLIC WORKS CONTRACTS. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "PUBLIC OWNER" SHALL MEAN THE STATE, OR ANY STATE AGENCY, PUBLIC DEPARTMENT, PUBLIC CORPORATION, BOARD, BUREAU, OR SUBDIVISION THEREOF OR ANY POLITICAL SUBDIVISION, MUNICIPAL CORPORATION, PUBLIC BENEFIT CORPORATION, PUBLIC AUTHORITY, SCHOOL DISTRICT OR A COMMISSION APPOINTED PURSUANT TO LAW.

(B) "CONTRACT" SHALL MEAN ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION, REPAIR OR MAINTENANCE OF ANY PUBLIC WORK PROJECT.

(C) "CONTRACTOR" SHALL MEAN ANY PERSON, FIRM, PARTNERSHIP, CORPORATION, ASSOCIATION, COMPANY, SUB-CONTRACTOR, MATERIALMAN SECURED BY A CONTRACTOR OR A SUBCONTRACTOR, OR OTHER ENTITY OR COMBINATION THEREOF, WHICH ENTERS INTO A CONTRACT TO PROVIDE SERVICES TO A PUBLIC OWNER.

(D) "MATERIALLY PREJUDICE" SHALL MEAN TO SUBSTANTIALLY IMPAIR THE ABILITY OF THE PUBLIC OWNER TO INVESTIGATE OR DEFEND THE CLAIM, PROVIDED THAT THE PUBLIC OWNER'S ACTUAL KNOWLEDGE OF THE EVENTS IN QUESTION SHALL PRECLUDE A CLAIM OF MATERIAL PREJUDICE DUE TO LACK OF ANY REQUIRED NOTICE.

2. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, ANY CONTRACT MADE AND AWARDED BY A PUBLIC OWNER FOR ANY PUBLIC WORK PROJECT SHALL CONTAIN, OR BE PRESUMED TO CONTAIN, THE FOLLOWING PROVISION OR A PROVISION THAT IS EQUALLY FAVORABLE TO THE CONTRACTOR:

THE FAILURE TO GIVE ANY NOTICE REQUIRED TO BE GIVEN BY SUCH CONTRACT WITHIN THE TIME PRESCRIBED THEREIN SHALL NOT INVALIDATE ANY CLAIM MADE BY THE CONTRACTOR OR ANY OTHER CLAIMANT, UNLESS THE FAILURE TO PROVIDE TIMELY NOTICE HAS MATERIALLY PREJUDICED THE PUBLIC OWNER.

3. IN ANY ACTION IN WHICH A PUBLIC OWNER ALLEGES THAT IT WAS MATERIALLY PREJUDICED AS A RESULT OF A FAILURE TO PROVIDE TIMELY NOTICE, THE BURDEN OF PROOF SHALL BE ON:

(A) THE PUBLIC OWNER TO PROVE THAT IT HAS BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED WITHIN ONE HUNDRED EIGHTY DAYS OF THE TIME REQUIRED UNDER THE CONTRACT; OR

(B) THE CONTRACTOR OR ANY OTHER CLAIMANT, TO PROVE THAT THE PUBLIC OWNER HAS NOT BEEN PREJUDICED, IF THE NOTICE WAS PROVIDED MORE THAN ONE HUNDRED EIGHTY DAYS AFTER THE TIME REQUIRED UNDER THE CONTRACT.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law, and shall apply to all contracts entered into on and after such date.