

1864

2015-2016 Regular Sessions

I N   S E N A T E

January 15, 2015

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Introduced by Sen. MARCELLINO -- read twice and ordered printed, and  
when printed to be committed to the Committee on Finance

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:

1     Section 1. Section 165 of the state finance law is amended by adding a  
2     new subdivision 9 to read as follows:  
3     9. ARBITRATION PROVISION. A. FOR THE PURPOSES OF THIS SUBDIVISION  
4     "ARBITRATION PROVISIONS" SHALL MEAN ANY REQUIREMENT THAT AN EMPLOYEE OR  
5     INDEPENDENT CONTRACTOR PERFORMING WORK UNDER SUCH VENDOR'S CONTRACT OR  
6     SUBCONTRACT TO SUBMIT CLAIMS ARISING UNDER TITLE VII OF THE CIVIL RIGHTS  
7     ACT OF 1964 OR ARTICLE FIFTEEN OF THE EXECUTIVE LAW TO PRIVATE ARBI-  
8     TRATION FOR RESOLUTION; THIS SHALL NOT INCLUDE ARBITRATION THAT IS  
9     MANDATED BY A COLLECTIVE BARGAINING AGREEMENT BETWEEN SUCH VENDOR AND  
10    EMPLOYEE AND/OR INDEPENDENT CONTRACTOR.  
11    B. (I) WITH RESPECT TO CONTRACTS DESCRIBED IN SUBPARAGRAPHS (II) AND  
12    (III) OF THIS PARAGRAPH, AND IN ACCORDANCE WITH SUCH SUBPARAGRAPHS,  
13    STATE AGENCIES AS DEFINED IN THIS ARTICLE SHALL NOT CONTRACT FOR THE  
14    SUPPLY OF COMMODITIES, SERVICE OR CONSTRUCTION WITH ANY CONTRACTOR WHO  
15    DOES NOT AGREE TO STIPULATE TO THE FOLLOWING, IF THERE IS ANOTHER  
16    CONTRACTOR WHO WILL CONTRACT TO SUPPLY COMMODITIES, SERVICES OR  
17    CONSTRUCTION OF COMPARABLE QUALITY AT A COMPARABLE PRICE OR COST: THE  
18    CONTRACTOR SHALL NOT PLACE ANY ARBITRATION PROVISION UPON THEIR EMPLOY-  
19    EES THAT WORK ON SUCH CONTRACT.  
20    (II) IN THE CASE OF CONTRACTS LET BY A COMPETITIVE PROCESS, WHENEVER  
21    THE RESPONSIVE AND RESPONSIBLE OFFERER HAVING THE LOWEST PRICE OR BEST  
22    VALUE OFFER HAS NOT AGREED TO STIPULATE TO THE CONDITIONS SET FORTH IN  
23    THIS SUBDIVISION AND ANOTHER RESPONSIVE AND RESPONSIBLE OFFERER WHO HAS  
24    AGREED TO STIPULATE TO SUCH CONDITIONS HAS SUBMITTED AN OFFER WITHIN  
25    FIVE PERCENT OF THE LOWEST PRICE OR BEST VALUE OFFER FOR A CONTRACT TO

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

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1 SUPPLY COMMODITIES, SERVICES OR CONSTRUCTION OF COMPARABLE QUALITY, THE  
2 CONTRACTING ENTITY SHALL REFER SUCH OFFERS TO THE COMMISSIONER OF GENER-  
3 AL SERVICES, WHO MAY DETERMINE, IN ACCORDANCE WITH APPLICABLE LAW AND  
4 RULES, THAT IT IS IN THE BEST INTEREST OF THE STATE THAT THE CONTRACT BE  
5 AWARDED TO OTHER THAN THE LOWEST PRICE OR BEST VALUE OFFER.

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

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

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

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