

STATE OF NEW YORK

348

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

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

AN ACT to amend the labor law, the general municipal law, the state finance law and the education law, in relation to advertisements for bids

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (c) of subdivision 3 of section 220 of the labor
2 law, as separately amended by chapter 678 of the laws of 2007 and chap-
3 ter 7 of the laws of 2008, is amended to read as follows:

4 (c) It shall be the duty of the fiscal officer, as defined in this
5 section, to ascertain and determine the schedules of supplements to be
6 provided and wages to be paid workers, laborers and mechanics on such
7 public work, prior to the time of the advertisement for bids, and such
8 schedules shall be annexed to and form a part of the specifications for
9 the work. Such fiscal officer shall file with the department having
10 jurisdiction such schedules prior to the time of the commencement of the
11 advertisement for bids on all public works proposed to be constructed.

12 If the fiscal officer cannot ascertain or determine such schedules or
13 wages, or distinguish between the classifications of workers on such
14 public work, it shall be the duty of the fiscal officer to reject any
15 contract associated with the advertisement for bids. The term "contract"

16 as used in this article also shall include reconstruction and repair of
17 any such public work, and any public work performed under a lease,
18 permit or other agreement pursuant to which the department of jurisdic-
19 tion grants the responsibility of contracting for such public work to
20 any third party proposing to perform such work to which the provisions
21 of this article would apply had the department of jurisdiction
22 contracted directly for its performance, or where there is no lease,
23 permit or other agreement and ownership of a public work is intended to

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

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1 be assumed by such public entity at any time subsequent to completion of
2 the public work.

3 § 2. Subdivision 1 of section 103 of the general municipal law, as
4 amended by section 1 of chapter 2 of the laws of 2012, is amended to
5 read as follows:

6 1. Except as otherwise expressly provided by an act of the legislature
7 or by a local law adopted prior to September first, nineteen hundred
8 fifty-three, all contracts for public work involving an expenditure of
9 more than thirty-five thousand dollars and all purchase contracts
10 involving an expenditure of more than twenty thousand dollars, shall be
11 awarded by the appropriate officer, board or agency of a political
12 subdivision or of any district therein including but not limited to a
13 soil conservation district to the lowest responsible bidder furnishing
14 the required security after advertisement for sealed bids in the manner
15 provided by this section, provided, however, that purchase contracts
16 (including contracts for service work, but excluding any purchase
17 contracts necessary for the completion of a public works contract pursu-
18 ant to article eight of the labor law) may be awarded on the basis of
19 best value, as defined in section one hundred sixty-three of the state
20 finance law, to a responsive and responsible bidder or offerer in the
21 manner provided by this section except that in a political subdivision
22 other than a city with a population of one million inhabitants or more
23 or any district, board or agency with jurisdiction exclusively therein
24 the use of best value for awarding a purchase contract or purchase
25 contracts must be authorized by local law or, in the case of a district
26 corporation, school district or board of cooperative educational
27 services, by rule, regulation or resolution adopted at a public meeting.

28 All submitted bids for such public work contracts shall be for a fixed-
29 dollar amount. In any case where a responsible bidder's or responsible
30 offerer's gross price is reducible by an allowance for the value of used
31 machinery, equipment, apparatus or tools to be traded in by a political
32 subdivision, the gross price shall be reduced by the amount of such
33 allowance, for the purpose of determining the best value. In cases
34 where two or more responsible bidders furnishing the required security
35 submit identical bids as to price, such officer, board or agency may
36 award the contract to any of such bidders. Such officer, board or agency
37 may, in his or her or its discretion, reject all bids or offers and
38 readvertise for new bids or offers in the manner provided by this
39 section. In determining whether a purchase is an expenditure within the
40 discretionary threshold amounts established by this subdivision, the
41 officer, board or agency of a political subdivision or of any district
42 therein shall consider the reasonably expected aggregate amount of all
43 purchases of the same commodities, services or technology to be made
44 within the twelve-month period commencing on the date of purchase.
45 Purchases of commodities, services or technology shall not be arti-
46 ficially divided for the purpose of satisfying the discretionary buying
47 thresholds established by this subdivision. A change to or a renewal of
48 a discretionary purchase shall not be permitted if the change or renewal
49 would bring the reasonably expected aggregate amount of all purchases of
50 the same commodities, services or technology from the same provider
51 within the twelve-month period commencing on the date of the first
52 purchase to an amount greater than the discretionary buying threshold
53 amount. For purposes of this section, "sealed bids" and "sealed offers",
54 as that term applies to purchase contracts, (including contracts for
55 service work, but excluding any purchase contracts necessary for the
56 completion of a public works contract pursuant to article eight of the

labor law) shall include bids and offers submitted in an electronic format including submission of the statement of non-collusion required by section one hundred three-d of this article, provided that the governing board of the political subdivision or district, by resolution, has authorized the receipt of bids and offers in such format. Submission in electronic format may, for technology contracts only, be required as the sole method for the submission of bids and offers. Bids and offers submitted in an electronic format shall be transmitted by bidders and offerers to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids and offers shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must (a) document the time and date of receipt of each bid and offer received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or offers. The timely submission of an electronic bid or offer in compliance with instructions provided for such submission in the advertisement for bids or offers and/or the specifications shall be the responsibility solely of each bidder or offerer or prospective bidder or offerer. No political subdivision or district therein shall incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic bids and offers.

§ 3. Subdivision 1 of section 103 of the general municipal law, as amended by section 2 of chapter 2 of the laws of 2012, is amended to read as follows:

1. Except as otherwise expressly provided by an act of the legislature or by a local law adopted prior to September first, nineteen hundred fifty-three, all contracts for public work involving an expenditure of more than thirty-five thousand dollars and all purchase contracts involving an expenditure of more than twenty thousand dollars, shall be awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district to the lowest responsible bidder furnishing the required security after advertisement for sealed bids in the manner provided by this section, provided, however, that purchase contracts (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) may be awarded on the basis of best value, as defined in section one hundred sixty-three of the state finance law, to a responsive and responsible bidder or offerer in the manner provided by this section except that in a political subdivision other than a city with a population of one million inhabitants or more or any district, board or agency with jurisdiction exclusively therein the use of best value of awarding a purchase contract or purchase contracts must be authorized by local law or, in the case of a district corporation, school district or board of cooperative educational services, by rule, regulation or resolution adopted at a public meeting. All submitted bids for such public work contracts shall be for a fixed-dollar amount. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase.

Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the low bid or best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his, her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section.

§ 4. Subdivision 2 of section 103 of the general municipal law, as amended by section 1 of chapter 367 of the laws of 2014, is amended to read as follows:

2. Advertisement for bids and offers shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose and may be published in the procurement opportunities newsletter pursuant to article four-C of the economic development law. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such notice will be publicly opened and read and where the identity of all offerers will be publicly disclosed, and the designation of the receiving device if the political subdivision or district has authorized the receipt of bids and offers in an electronic format. Such advertisement shall describe specifically the nature of the work, including the type of work to be performed, and enable the bidder to comply with paragraph (c) of subdivision three of section two hundred twenty of the labor law.

Such board or agency may by resolution designate any officer or employee to open the bids and offers at the time and place specified in the notice. Such designee shall make a record of such bids and offers in such form and detail as the board or agency shall prescribe and present the same at the next regular or special meeting of such board or agency. All bids received shall be publicly opened and read at the time and place so specified and the identity of all offerers shall be publicly disclosed at the time and place so specified. At least five days shall elapse between the first publication of such advertisement and the date so specified for the opening and reading of bids and offers.

§ 5. Subdivision 2 of section 103 of the general municipal law, as amended by section 2 of chapter 367 of the laws of 2014, is amended to read as follows:

2. Advertisement for bids and offers shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose and may be published in the procurement opportunities newsletter pursuant to article four-C of the economic development law. Such advertisement shall contain a statement of the time when and place where all bids received pursuant to such notice will be publicly opened and read and where the identity of all offerers will be publicly disclosed. Such advertisement shall describe

1 specifically the nature of the work, including the type of work to be
2 performed, and enable the bidder to comply with paragraph (c) of subdi-
3 vision three of section two hundred twenty of the labor law. Such board
4 or agency may by resolution designate any officer or employee to open
5 the bids and offers at the time and place specified in the notice. Such
6 designee shall make a record of such bids and offers in such form and
7 detail as the board or agency shall prescribe and present the same at
8 the next regular or special meeting of such board or agency. All bids
9 received shall be publicly opened and read at the time and place so
10 specified and the identity of all offerers shall be publicly disclosed
11 at the time and place so specified. At least five days shall elapse
12 between the first publication of such advertisement and the date so
13 specified for the opening and reading of bids and offers.

14 § 6. Section 135 of the state finance law, as amended by section 3 of
15 part MM of chapter 57 of the laws of 2008, is amended to read as
16 follows:

17 § 135. Separate specifications for contract work for the state. Except
18 as otherwise provided in section two hundred twenty-two of the labor
19 law, every officer, board, department, commission or commissions,
20 charged with the duty of preparing specifications or awarding or enter-
21 ing into contracts for the erection, construction or alteration of
22 buildings, for the state, when the entire cost of such work shall exceed
23 three million dollars in the counties of the Bronx, Kings, New York,
24 Queens, and Richmond; one million five hundred thousand dollars in the
25 counties of Nassau, Suffolk and Westchester; and five hundred thousand
26 dollars in all other counties within the state, must have prepared sepa-
27 rate specifications for each of the following three subdivisions of the
28 work to be performed:

- 29 1. Plumbing and gas fitting.
- 30 2. Steam heating, hot water heating, ventilating and air conditioning
31 apparatus.
- 32 3. Electric wiring and standard illuminating fixtures.

33 Such specifications must be so drawn as to permit separate and inde-
34 pendent bidding upon each of the above three subdivisions of work. All
35 contracts hereafter awarded by the state or a department, board, commis-
36 sioner or officer thereof, for the erection, construction or alteration
37 of buildings, or any part thereof, shall award the three subdivisions of
38 the above specified work separately to responsible and reliable persons,
39 firms or corporations engaged in these classes of work. A contract for
40 one or more buildings in any project shall be awarded to the lowest
41 responsible bidder for all the buildings included in the specifications.

42 All such specifications issued pursuant to this article shall
43 describe specifically the nature of the work, including the type of work
44 to be performed, and enable the bidder to comply with paragraph (c) of
45 subdivision three of section two hundred twenty of the labor law. Each
46 bidder for any project under this article shall submit bids for a fixed-
47 dollar amount.

48 Each bidder on a public work contract, where the preparation of sepa-
49 rate specifications is not required, shall submit with its bid a sepa-
50 rate sealed list that names each subcontractor that the bidder will use
51 to perform work on the contract, and the agreed-upon amount to be paid
52 to each, for: (a) plumbing and gas fitting, (b) steam heating, hot water
53 heating, ventilating and air conditioning apparatus and (c) electric
54 wiring and standard illuminating fixtures. After the low bid is
55 announced, the sealed list of subcontractors submitted with such low bid
56 shall be opened and the names of such subcontractors shall be announced,

1 and thereafter any change of subcontractor or agreed-upon amount to be
2 paid to each shall require the approval of the public owner, upon a
3 showing presented to the public owner of legitimate construction need
4 for such change, which shall be open to public inspection. Legitimate
5 construction need shall include, but not be limited to, a change in
6 project specifications, a change in construction material costs, a
7 change to subcontractor status as determined pursuant to paragraph (e)
8 of subdivision two of section two hundred twenty-two of the labor law,
9 or the subcontractor has become otherwise unwilling, unable or unavail-
10 able to perform the subcontract. The sealed lists of subcontractors
11 submitted by all other bidders shall be returned to them unopened after
12 the contract award.

13 Nothing in this section shall be construed to prevent the authorities
14 in charge of any state building, from performing any such branches of
15 work by or through their regular employees, or in the case of public
16 institutions, by the inmates thereof.

17 § 7. Paragraphs a and d of subdivision 6 of section 2590-p of the
18 education law, paragraph a as amended by chapter 285 of the laws of 2014
19 and paragraph d as amended by chapter 91 of the laws of 2002, are
20 amended to read as follows:

21 a. For each project included in an approved five-year educational
22 facilities capital plan, the chancellor shall develop a detailed scope
23 of the project, which shall include the following: (i) the purposes and
24 public to be served, (ii) the programs to be conducted in the facility,
25 (iii) the gross amounts of space and bulk for any building or structure,
26 (iv) identification of the intent to use architectural, engineering or
27 other consultant services and estimated fees for such consultant
28 services, (v) the schedule of design and construction, (vi) the total
29 estimated project costs, including costs for site acquisition, prepara-
30 tion and tenant relocation, design, construction and equipment, (vii)
31 maximum estimated expenditures for the project for each fiscal year
32 until its completion, (viii) costs associated with maintenance and oper-
33 ation of the physical plant, (ix) how the data provided by the office of
34 city planning, the department of buildings, the department of housing
35 preservation and development and the department of health and mental
36 hygiene pursuant to subdivisions thirteen-a, thirteen-b, thirteen-c, and
37 thirteen-d of section seventeen hundred twenty-eight of the public
38 authorities law is factored and accounted for, and (x) such other infor-
39 mation as the chancellor shall specify. In the event, a project consists
40 of a program element without identification of the particular education
41 facility at which such project is to be performed, the detailed scope of
42 the project shall specify the nature of the work to be performed, appli-
43 cable price and quality standards, a list of the schools eligible for
44 such work, annual performance targets and the total estimated costs of
45 such project during each fiscal year until its completion. All such
46 estimated costs and prices shall be for a fixed-dollar amount.

47 d. For projects to be funded pursuant to subdivision four of this
48 section, the chancellor shall transmit the detailed scope of each such
49 project to the director of management and budget of the city for
50 approval.

51 (i) Except as provided in paragraph b of this subdivision, no expenses
52 shall be incurred by the city board or the authority for any such
53 project prior to approval of the detailed scope of any such project.
54 Such detailed scope of the project shall describe specifically the
55 nature of the work, including the type of work to be performed.

(ii) No detailed scope of project shall be approved unless the total estimated costs of such project, together with the aggregate estimated costs of all projects for which a detailed scope has theretofore been approved, are within city capital budget appropriations available therefor. A detailed scope of project that is not disapproved by the director of management and budget within thirty days of its submission shall be deemed approved. To the extent the director disapproves all or part of a scope, he or she shall set forth in writing the reasons therefor.

(iii) Upon approval of the detailed scope of project, the chancellor shall refer such project to the New York city school construction authority for implementation in accordance with an agreement between the authority and the city board and shall transmit the approved project scope to the comptroller, whereupon the total estimated costs of such project as set forth in such approved project scope shall be available for expenditure. All such estimated costs shall be for a fixed-dollar amount.

(iv) Approval of the director of management and budget shall be required for any material change in the approved detailed scope of project or for any increase in the total cost of such project in excess of any reserve provided in the approved detailed scope of project. Such approval shall be given or deemed given in the manner provided herein.

(v) The provisions of this paragraph shall not apply to emergency projects undertaken pursuant to paragraph h of subdivision two of this section, the estimated costs of which, together with the costs of other projects undertaken pursuant to said paragraph h, does not exceed the amount set forth in the educational facilities capital plan for activities pursuant to paragraph h of subdivision two of this section.

§ 8. This act shall take effect on the ninetieth day after it shall have become a law, provided however, that the amendments to subdivision 1 of section 103 of the general municipal law made by section two of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision (a) of section 41 of part X of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of section three of this act shall take effect, provided further, that the amendments to subdivision 2 of section 103 of the general municipal law made by section four of this act shall be subject to the expiration and reversion of such subdivision pursuant to subdivision (a) of section 41 of part X of chapter 62 of the laws of 2003, as amended, when upon such date the provisions of section five of this act shall take effect; provided, further, that the amendments to paragraph d of subdivision 6 of section 2590-p of the education law made by section seven of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith.