

# STATE OF NEW YORK

8931

## IN ASSEMBLY

January 8, 2018

Introduced by M. of A. BRONSON -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to reciprocity of debarments imposed under the federal Davis-Bacon Act

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

1 Section 1. Subparagraph 3 of paragraph b of subdivision 3 of section  
2 220-b of the labor law, as added by a chapter of the laws of 2017,  
3 amending the labor law and the general municipal law relating to reci-  
4 procity of debarments imposed under the federal Davis-Bacon Act; and  
5 relating to a work group to study and make recommendations to the legis-  
6 lature regarding the appropriate payment of supplements to construction  
7 workers, as proposed in legislative bills numbers S. 6790 and A. 8514,  
8 is amended to read as follows:

9 (3)(i) When any contractor [~~or~~], subcontractor, or person is [~~debarred~~  
10 ~~for having disregarded obligations to employees under the Davis-Bacon~~  
11 ~~Act pursuant to 40 U.S.C. 3144 and 29 C.F.R. 5.12,~~] listed by the  
12 federal government as excluded from receiving federal contracts and  
13 certain subcontracts, assistance or benefits, pursuant to 48 C.F.R.  
14 Subpart 9-4, such contractor [~~or~~], subcontractor, [~~and any "substantial-~~  
15 ~~ly owned affiliated entity" as defined by paragraph g of subdivision~~  
16 ~~five of section two hundred twenty of this article,~~] or person shall be  
17 ineligible to submit a bid on or be awarded any public [~~works~~] work  
18 contract with the state, any municipal corporation, public benefit  
19 corporation or public body [~~while the name of the person or entity is~~  
20 ~~published in the list of debarred contractors pursuant to 40 U.S.C.~~  
21 ~~3144. Where a contractor or subcontractor is determined to be ineligible~~  
22 ~~pursuant to this subparagraph because it is considered a "substantially~~  
23 ~~owned affiliated entity," such contractor or subcontractor shall be~~  
24 ~~provided with written notice from the department within seven days and~~  
25 ~~shall be afforded the opportunity to appeal the ineligibility determi-~~  
26 ~~nation to the department within thirty calendar days of the written~~  
27 ~~notice. In order for a substantially-owned affiliated entity to be~~  
28 ~~debarred pursuant to this subparagraph, such substantially-owned affil-~~

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

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~~iated entity must have substantial involvement in the day to day management of the contractor or subcontractor~~ during such period of exclusion, unless the department having jurisdiction determines, after public notice and comment, that there is a compelling reason, consistent with 48 C.F.R. § 9.405, to allow such contractor, subcontractor, or person to submit a bid or to be awarded a particular public work contract. Public notice shall include notice provided to the department, which shall post such notice on its website.

(ii) When the fiscal officer determines that a contractor, subcontractor or person is a "substantially owned-affiliated entity," as defined by paragraph g of subdivision five of section two hundred twenty of this article, in relation to a contractor, subcontractor, or person ineligible to submit a bid or be awarded a public work contract under clause (i) of this subparagraph, such substantially owned-affiliated entity shall be ineligible to submit a bid or be awarded any public work contract with the state, any municipal corporation, public benefit corporation for the duration of the remaining period of exclusion of the contractor, subcontractor, or person under clause (i) of this subparagraph. In order for a substantially owned-affiliated entity to be debarred pursuant to this clause, such substantially owned-affiliated entity must have had substantial involvement in the day to day management of the contractor, subcontractor or person debarred under clause (i) of this subparagraph. Such substantially owned-affiliated entity shall be provided with written notice from the fiscal officer of the proposed determination and shall be afforded an opportunity to be heard regarding the ineligible determination by the fiscal officer within thirty calendar days of the written notice. In addition, the department having jurisdiction may determine, after public notice and comment, that there is a compelling reason, consistent with 48 C.F.R. § 9.405, to allow such substantially owned-affiliated entity to submit a bid or to be awarded a particular public work contract. Public notice shall include notice provided to the department, which shall post such notice on its website.

(iii) Any [~~eligibility determination~~] determinations made pursuant to this subparagraph shall be subject to review pursuant to article seventy-eight of the civil practice law and rules.

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2017 amending the labor law and the general municipal law relating to reciprocity of debarments imposed under the federal Davis-Bacon Act; and relating to a work group to study and make recommendations to the legislature regarding the appropriate payment of supplements to construction workers, as proposed in legislative bills numbers S. 6790 and A. 8514, takes effect.