

STATE OF NEW YORK

6790

2017-2018 Regular Sessions

IN SENATE

June 18, 2017

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

AN ACT to amend the labor law and the general municipal law, in relation 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; and providing for the repeal of certain provisions of such laws relating thereto

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

1 Section 1. Paragraph b of subdivision 3 of section 220-b of the labor
2 law is amended by adding a new subparagraph 3 to read as follows:

3 (3)(i) When any contractor or subcontractor is debarred for having
4 disregarded obligations to employees under the Davis-Bacon Act pursuant
5 to 40 U.S.C. 3144 and 29 C.F.R. 5.12, such contractor or subcontractor,
6 and any "substantially owned-affiliated entity" as defined by paragraph
7 g of subdivision five of section two hundred twenty of this article,
8 shall be ineligible to submit a bid on or be awarded any public works
9 contract with the state, any municipal corporation, public benefit
10 corporation or public body while the name of the person or entity is
11 published in the list of debarred contractors pursuant to 40 U.S.C.
12 3144. Where a contractor or subcontractor is determined to be ineligible
13 pursuant to this subparagraph because it is considered a "substantially
14 owned-affiliated entity," such contractor or subcontractor shall be
15 provided with written notice from the department within seven days and
16 shall be afforded the opportunity to appeal the ineligibility determi-
17 nation to the department within thirty calendar days of the written
18 notice. In order for a substantially-owned affiliated entity to be
19 debarred pursuant to this subparagraph, such substantially-owned affil-
20 iated entity must have substantial involvement in the day to day manage-
21 ment of the contractor or subcontractor.

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

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1 (ii) Any eligibility determination made pursuant to this subparagraph
2 shall be subject to review pursuant to article seventy-eight of the
3 civil practice law and rules.

4 § 2. Section 103 of the general municipal law is amended by adding a
5 new subdivision 1-c to read as follows:

6 1-c. In determining the lowest responsible bidder, the officer, board
7 or agency of any political subdivision or of any district therein
8 charged with awarding of contracts, shall consider whether or not the
9 bidder, or any "substantially owned-affiliated entity" as defined by
10 paragraph g of subdivision five of section two hundred twenty of the
11 labor law, has been found to be in violation of the Davis-Bacon Act
12 pursuant to 40 U.S.C. 3144, the Copeland Act pursuant to 18 U.S.C. 874
13 and 40 U.S.C. 3145 or the Contract Work Hours and Safety Standards Act
14 pursuant to 40 U.S.C. 332.

15 § 3. The governor shall convene a work group to study and make recom-
16 mendations to the legislature regarding the appropriate payment of
17 supplements to construction workers and employing the annualization
18 methodology utilized by the United States department of labor in calcu-
19 lations under the Davis-Bacon Act of 1931, as amended 40 U.S.C. §
20 276(a). The work group shall be comprised of nine members: one
21 appointed by the governor, one appointed by the temporary president of
22 the senate, one appointed by the speaker of the assembly, one appointed
23 by the commissioner of labor, one appointed by the comptroller, two
24 representatives of labor organizations appointed by the governor, and
25 two representatives of contractor associations appointed by the gover-
26 nor. Any appointing authority's failure to make an appointment pursuant
27 to this section shall not preclude the work group from meeting or issu-
28 ing recommendations. The work group shall issue recommendations to the
29 governor, the temporary president of the senate and the speaker of the
30 assembly within one hundred eighty days of the effective date of this
31 chapter.

32 § 4. This act shall take effect immediately; provided, however, that
33 sections one and two of this act shall take effect on the ninetieth day
34 after it shall have become a law and shall apply to all public works
35 bids and contracts solicited on or after such effective date and shall
36 expire and be deemed repealed three years from such effective date;
37 provided, that any contractor or subcontractor who is ineligible to
38 submit a bid on any public work contract pursuant to this act shall
39 remain ineligible as long as the name of the person or entity is
40 published in the list of debarred contractors pursuant to 40 U.S.C. 3144
41 notwithstanding such repeal of this act; provided, further however, this
42 act shall not apply retroactively to previously issued or existing
43 public works contracts, with the state, any municipal corporation,
44 public benefit corporation or public body.