

# STATE OF NEW YORK

3427

2019-2020 Regular Sessions

## IN SENATE

February 6, 2019

Introduced by Sen. SALAZAR -- 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.

4 a. For the purposes of this subdivision "arbitration provisions" shall  
5 mean any requirement that an employee or independent contractor perform-  
6 ing work under such vendor's contract or subcontract to submit claims  
7 arising under title VII of the civil rights act of 1964 or article  
8 fifteen of the executive law to private arbitration for resolution; this  
9 shall not include arbitration that is mandated by a collective bargain-  
10 ing agreement between such vendor and employee and/or independent  
11 contractor.

12 b. (i) With respect to contracts described in subparagraphs (ii) and  
13 (iii) of this paragraph, and in accordance with such subparagraphs,  
14 state agencies as defined in this article shall not contract for the  
15 supply of commodities, service or construction with any contractor who  
16 does not agree to stipulate to the following, if there is another  
17 contractor who will contract to supply commodities, services or  
18 construction of comparable quality at a comparable price or cost: the  
19 contractor shall not place any arbitration provision upon their employ-  
20 ees that work on such contract.

21 (ii) In the case of contracts let by a competitive process, whenever  
22 the responsive and responsible offerer having the lowest price or best  
23 value offer has not agreed to stipulate to the conditions set forth in  
24 this subdivision and another responsive and responsible offerer who has  
25 agreed to stipulate to such conditions has submitted an offer within

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

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1 five percent of the lowest price or best value offer for a contract to  
2 supply commodities, services or construction of comparable quality, the  
3 contracting entity shall refer such offers to the commissioner of gener-  
4 al services, who may determine, in accordance with applicable law and  
5 rules, that it is in the best interest of the state that the contract be  
6 awarded to other than the lowest price or best value offer.

7 (iii) In the case of contracts let by other than a competitive process  
8 for goods or services involving an expenditure of an amount greater than  
9 the discretionary buying threshold as specified in section one hundred  
10 sixty-three of this article, or for construction involving an amount  
11 greater than fifteen thousand dollars, the contracting entity shall not  
12 award to a proposed contractor who has not agreed to stipulate to the  
13 conditions set forth in this subdivision unless the entity seeking to  
14 use the commodities, services or construction determines that the  
15 commodities, services or construction are necessary for the entity to  
16 perform its functions and there is no other responsible contractor who  
17 will supply commodities, services or construction of comparable quality  
18 at a comparable price. Such determinations shall be made in writing and  
19 shall be public documents.

20 c. Upon receiving information that a contractor who has made the stip-  
21 ulation required by this subdivision is in violation thereof, the  
22 contracting entity shall review such information and offer the contrac-  
23 tor an opportunity to respond. If the contracting entity finds that a  
24 violation has occurred, it shall take such action as may be appropriate  
25 and provided for by law, rule or contract, including, but not limited  
26 to, imposing sanctions, seeking compliance, recovering damages or  
27 declaring the contractor in default.

28 d. As used in this subdivision, the term "contract" shall not include  
29 contracts with governmental and non-profit organizations, contracts  
30 awarded pursuant to emergency procurement procedures or contracts,  
31 resolutions, indentures, declarations of trust or other instruments  
32 authorizing or relating to the authorization, issuance, award, sale or  
33 purchase of bonds, certificates of indebtedness, notes or other fiscal  
34 obligations, provided that the policies of this subdivision shall be  
35 considered when selecting a contractor to provide financial or legal  
36 advice, and when selecting managing underwriters in connection with such  
37 activities.

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