

STATE OF NEW YORK

4271

2019-2020 Regular Sessions

IN SENATE

March 6, 2019

Introduced by Sen. RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public authorities law, the general municipal law, the public service law and the state finance law, in relation to notice provisions in public works contracts

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

1 Section 1. The public authorities law is amended by adding a new
2 section 2882 to read as follows:

3 § 2882. Notice provisions in public works contracts. 1. For purposes
4 of this section, the following terms shall have the following meanings:

5 (a) "Public owner" shall mean any state or local authority, as defined
6 by section two of this chapter.

7 (b) "Contract" shall mean any contract made and awarded by a public
8 owner for construction, reconstruction, demolition, alteration, repair
9 or maintenance of any public work project.

10 (c) "Contractor" shall mean any person, firm, partnership, corpo-
11 ration, association, company, sub-contractor, materialman secured by a
12 contractor or a subcontractor, or other entity or combination thereof,
13 which enters into a contract to provide services to a public owner.

14 (d) "Materially prejudice" shall mean to substantially impair the
15 ability of the public owner to investigate or defend the claim, provided
16 that the public owner's actual knowledge of the events in question shall
17 preclude a claim of material prejudice due to lack of any required
18 notice.

19 2. Notwithstanding any other law to the contrary, any contract made
20 and awarded by a public owner for any public work project shall contain,
21 or be presumed to contain, the following provision or a provision that
22 is equally favorable to the contractor:

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

LBD10310-01-9

1 The failure to give any notice required to be given by such contract
2 within the time prescribed therein shall not invalidate any claim made
3 by the contractor or any other claimant, unless the failure to provide
4 timely notice has materially prejudiced the public owner.

5 3. In any action in which a public owner alleges that it was mate-
6 rially prejudiced as a result of a failure to provide timely notice, the
7 burden of proof shall be on:

8 (a) the public owner to prove that it has been prejudiced, if the
9 notice was provided within one hundred eighty days of the time required
10 under the contract; or

11 (b) the contractor or any other claimant, to prove that the public
12 owner has not been prejudiced, if the notice was provided more than one
13 hundred eighty days after the time required under the contract.

14 § 2. The general municipal law is amended by adding a new section
15 109-e to read as follows:

16 § 109-e. Notice provisions in public works contracts. 1. For purposes
17 of this section, the following terms shall have the following meanings:

18 (a) "Public owner" shall mean any political subdivision, municipal
19 corporation, school district, district corporation or board of cooper-
20 ative educational services.

21 (b) "Contract" shall mean any contract made and awarded by a public
22 owner for construction, reconstruction, demolition, alteration, repair
23 or maintenance of any public work project.

24 (c) "Contractor" shall mean any person, firm, partnership, corpo-
25 ration, association, company, sub-contractor, materialman secured by a
26 contractor or a subcontractor, or other entity or combination thereof,
27 which enters into a contract to provide services to a public owner.

28 (d) "Materially prejudice" shall mean to substantially impair the
29 ability of the public owner to investigate or defend the claim, provided
30 that the public owner's actual knowledge of the events in question shall
31 preclude a claim of material prejudice due to lack of any required
32 notice.

33 2. Notwithstanding any other law to the contrary, any contract made
34 and awarded by a public owner for any public work project shall contain,
35 or be presumed to contain, the following provision or a provision that
36 is equally favorable to the contractor:

37 The failure to give any notice required to be given by such contract
38 within the time prescribed therein shall not invalidate any claim made
39 by the contractor or any other claimant, unless the failure to provide
40 timely notice has materially prejudiced the public owner.

41 3. In any action in which a public owner alleges that it was mate-
42 rially prejudiced as a result of a failure to provide timely notice, the
43 burden of proof shall be on:

44 (a) the public owner to prove that it has been prejudiced, if the
45 notice was provided within one hundred eighty days of the time required
46 under the contract; or

47 (b) the contractor or any other claimant, to prove that the public
48 owner has not been prejudiced, if the notice was provided more than one
49 hundred eighty days after the time required under the contract.

50 § 3. The public service law is amended by adding a new section 28 to
51 read as follows:

52 § 28. Notice provisions in public works contracts. 1. For purposes of
53 this section, the following terms shall have the following meanings:

54 (a) "Public owner" shall mean the state, or any state agency, public
55 department, public corporation, board, bureau, or subdivision thereof,

1 any public benefit corporation, or a commission appointed pursuant to
2 law.

3 (b) "Contract" shall mean any contract made and awarded by a public
4 owner for construction, reconstruction, demolition, alteration, repair
5 or maintenance of any public work project.

6 (c) "Contractor" shall mean any person, firm, partnership, corpo-
7 ration, association, company, sub-contractor, materialman secured by a
8 contractor or a subcontractor, or other entity or combination thereof,
9 which enters into a contract to provide services to a public owner.

10 (d) "Materially prejudice" shall mean to substantially impair the
11 ability of the public owner to investigate or defend the claim, provided
12 that the public owner's actual knowledge of the events in question shall
13 preclude a claim of material prejudice due to lack of any required
14 notice.

15 2. Notwithstanding any other law to the contrary, any contract made
16 and awarded by a public owner for any public work project shall contain,
17 or be presumed to contain, the following provision or a provision that
18 is equally favorable to the contractor:

19 The failure to give any notice required to be given by such contract
20 within the time prescribed therein shall not invalidate any claim made
21 by the contractor or any other claimant, unless the failure to provide
22 timely notice has materially prejudiced the public owner.

23 3. In any action in which a public owner alleges that it was mate-
24 rially prejudiced as a result of a failure to provide timely notice, the
25 burden of proof shall be on:

26 (a) the public owner to prove that it has been prejudiced, if the
27 notice was provided within one hundred eighty days of the time required
28 under the contract; or

29 (b) the contractor or any other claimant, to prove that the public
30 owner has not been prejudiced, if the notice was provided more than one
31 hundred eighty days after the time required under the contract.

32 § 4. The state finance law is amended by adding a new section 179-ff
33 to read as follows:

34 § 179-ff. Notice provisions in public works contracts. 1. For purposes
35 of this section, the following terms shall have the following meanings:

36 (a) "Public owner" shall mean the state, or any state agency, public
37 department, public corporation, board, bureau, or subdivision thereof or
38 any political subdivision, municipal corporation, public benefit corpo-
39 ration, public authority, school district or a commission appointed
40 pursuant to law.

41 (b) "Contract" shall mean any contract made and awarded by a public
42 owner for construction, reconstruction, demolition, alteration, repair
43 or maintenance of any public work project.

44 (c) "Contractor" shall mean any person, firm, partnership, corpo-
45 ration, association, company, sub-contractor, materialman secured by a
46 contractor or a subcontractor, or other entity or combination thereof,
47 which enters into a contract to provide services to a public owner.

48 (d) "Materially prejudice" shall mean to substantially impair the
49 ability of the public owner to investigate or defend the claim, provided
50 that the public owner's actual knowledge of the events in question shall
51 preclude a claim of material prejudice due to lack of any required
52 notice.

53 2. Notwithstanding any other law to the contrary, any contract made
54 and awarded by a public owner for any public work project shall contain,
55 or be presumed to contain, the following provision or a provision that
56 is equally favorable to the contractor:

1 The failure to give any notice required to be given by such contract
2 within the time prescribed therein shall not invalidate any claim made
3 by the contractor or any other claimant, unless the failure to provide
4 timely notice has materially prejudiced the public owner.

5 3. In any action in which a public owner alleges that it was mate-
6 rially prejudiced as a result of a failure to provide timely notice, the
7 burden of proof shall be on:

8 (a) the public owner to prove that it has been prejudiced, if the
9 notice was provided within one hundred eighty days of the time required
10 under the contract; or

11 (b) the contractor or any other claimant, to prove that the public
12 owner has not been prejudiced, if the notice was provided more than one
13 hundred eighty days after the time required under the contract.

14 § 5. This act shall take effect on the one hundred eightieth day after
15 it shall have become a law, and shall apply to all contracts entered
16 into on and after such date.