STATE OF NEW YORK

3156

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to requiring the use of project labor agreements for large scale construction projects under the state university construction fund

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

Section 1. Section 370 of the education law is amended by adding a new subdivision 6-a to read as follows:

6-a. "Large-scale construction project" shall mean a construction project performed under the approved master plan of the state university; with respect to university-related economic development projects authorized by law pursuant to section three hundred seventy-two-a of this article involving the construction, acquisition, reconstruction, rehabilitation or improvement of academic buildings, dormitories and other facilities for which the total estimated cost of the construction contract or contracts to the fund is five million dollars or more.

§ 2. Section 376 of the education law is amended by adding a new subdivision 11 to read as follows:

11. (a) Each contract involving the awarding of a large-scale construction project shall require the use of a project labor agreement, as defined in subdivision one of section two hundred twenty-two of the labor law, for all contractors and subcontractors on the project, unless an exception applies as set forth in paragraph (b) of this subdivision.

(b) The fund may grant an exception from the requirements of this subdivision by providing a specific written explanation of why at least one of the following conditions exists with respect to the particular contract:

(i) requiring a project labor agreement on the project would not advance the fund's interests in achieving economy and efficiency in fund

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

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procurement. The exception shall be based on one or more of the following factors:

(A) the project is of short duration and lacks operational complexity;

(B) the project will involve only one craft or trade;

(C) the project will involve specialized construction work that is available from only a limited number of contractors or subcontractors; or

(D) the fund's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable;

(ii) market research indicates that requiring a project labor agreement on the project would substantially reduce the number of potential offerors to such a degree that adequate competition at a fair and reasonable price could not be achieved, however, a likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from coverage under this section unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price; or

(iii) requiring a project labor agreement on the project would otherwise be inconsistent with statutes, rules, or regulations applicable to the fund.

(iv) when determining whether the exception in subparagraph (ii) of this paragraph applies, the fund shall consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the requirement for a project labor agreement such as costs of labor or materials, or supply chain costs. The fund may rely on price analysis conducted on recent competitive proposals for construction projects of a similar size and scope when evaluating an exception.

(v) any exception to the application of this subdivision shall be granted for a particular project contract by the solicitation date.

(c) An agency may require the use of a project labor agreement on construction projects where the total cost to the fund is less than that for a large-scale construction project, if appropriate.

(d) The fund, if appropriate, may require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the fund decides that the use of project labor agreements will:

(i) advance the fund's interest in achieving economy and efficiency in procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(ii) be consistent with law.

(e) The fund may consider the following factors in deciding whether the use of a project labor agreement is appropriate for a construction project where the total cost to the fund is less than that for a large-scale construction project:

(i) the project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades;

(ii) there is a shortage of skilled labor in the region in which the construction project will be sited;

(iii) completion of the project will require an extended period of time;

(iv) project labor agreements have been used on comparable projects undertaken by federal, state, municipal, or private entities in the geographic area of the project;

(v) a project labor agreement will promote the fund's long term program interests, such as facilitating the training of a skilled work-force to meet the agency's future construction needs; and

(vi) any other factors that the fund determines are appropriate.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to all contracts entered into, renewed, modified or amended on or after such date.