



NEW YORK STATE SENATOR

Diane J. Savino

## Related Legislation to Create Responsibility Questionnaire System Would Help to Weed Out Unscrupulous Contractors; Create More Level Playing Field for Law-Abiding Bidders on Public Works Contracts

DIANE J. SAVINO January 12, 2010

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LABOR COMMITTEE REPORT URGES THAT “LOWEST RESPONSIBLE BIDDER” BE DEFINED TO PROTECT WORKERS, IMPROVE PUBLIC WORKS PROJECTS, AND RECOUP MONEY NOW LOST TO NEW YORK’S UNDERGROUND ECONOMY

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State Senator George Onorato (D-Queens), the chairman of the Senate Standing Committee on Labor, today announced that he, together with Senator William T. Stachowski (D-Erie County), is introducing legislation (S.6434) designed to ensure that contractors and subcontractors who compete for public works contracts in New York State meet specific responsibility standards -- such as properly classifying their workers; paying unemployment and payroll taxes; complying with prevailing wage and workers’ compensation requirements, and otherwise abiding by state labor and tax laws. The bill, which would set specific criteria

that bidders must meet to be awarded state and local public works contracts, would help to address New York's budget crisis by stemming the loss of state tax and other revenues to the underground economy.

The Stachowski/Onorato legislation, together with a Labor Committee report released today entitled "Responsible Bidding on Public Work: Improving New York's Lowest Responsible Bidder Law," is the result of a public hearing held by the Committee in April, 2009. Under existing law, state and local public works contracts above certain dollar amounts must be awarded to the "lowest responsible bidder." However, the law lacks specific standards to define this term, which has allowed unscrupulous contractors to win contracts based solely on their low bids, regardless of whether they knowingly fail to pay prevailing wages, avoid payroll or unemployment taxes, or take other actions to skirt the law.

"The law's failure to define who or what constitutes a 'responsible bidder' has proven harmful to workers, law-abiding contractors and subcontractors, and the taxpayers of New York State as a whole," said Senator Onorato. "When a contractor wins a bid solely on the basis of lowest cost, but doesn't pay workers' compensation or unemployment insurance, and doesn't provide apprenticeship training to ensure employee safety, workers suffer. Law-abiding contractors can't compete. Projects are sometimes sub-par and need expensive repairs. And in the end, New York State loses untold amounts of money in taxes, unreported wages, and other revenues to the underground economy."

Under the legislation, all contractors and subcontractors intending to bid on state and local public works contracts would be required to fill out responsibility questionnaires, which would be maintained by the State Comptroller's office. The questionnaires would determine whether potential bidders comply with prevailing wage and other labor laws;

maintain unemployment and workers' compensation coverage; use apprenticeship training programs; have not been involved in business-related criminal activity; possess adequate expertise and financial resources, and meet other responsibility standards. State and local contracting officials must review the questionnaires of bidders before awarding contracts. In addition, failure to meet certain responsibility standards would result in the bidder's disqualification from being awarded contracts.

In addition to Senators Onorato and Stachowski, the legislation is being sponsored by State Senators Neil Breslin, Thomas Duane, Brian X. Foley, Shirley Huntley, Suzi Oppenheimer, Kevin Parker, Diane Savino and Toby Ann Stavisky.

"This legislation adds another layer of checks and balances to the Labor and Tax Law to further ensure that state funding is being spent in the most cautious, accurate and efficient way possible," said Senator William T. Stachowski, Chairman of the Senate Committee on Commerce, Economic Development and Small Business. "It closes a loophole in current law that can put law-abiding contractors and subcontractors at a disadvantage when competing for state contracts. Any contractor who wins a public works contract and doesn't then pay for the required coverage for his or her employees isn't scamming the 'system.' Ultimately, it's the taxpayers who are being cheated. This change in the law will better enable the state to retain the proper tax revenue we are oftentimes losing on the investments we are making."

"This legislation will ensure that responsible contractors and skilled workers are doing the taxpayers' work in the most efficient manner possible," said Senator Brian X. Foley (D-Blue Point). "It will enhance the quality of work done throughout our state and make prevailing wage a standard for contractors and subcontractors doing public work."

"Honest contractors should not be penalized for abiding by the law. Allowing

unscrupulous contractors to take advantage of loopholes in order to avoid paying their employees a living wage, worker's compensation, payroll or unemployment taxes hurts the entire economy in lost wages and revenue. This legislation will close those loopholes and stem the loss of tax dollars, as well as good paying jobs," said Senator Diane J. Savino (D-Staten Island/Brooklyn).

In conclusion, Senator Onorato said, "With the budget crisis facing our State, it is crucial that we act expeditiously to recover the tax revenue that we have been losing and create good jobs by ensuring that only responsible contractors are selected for public works contracts. I hope that this legislation will be signed into law during this new session. We must fight back against shady contractors who break the law in order to win bids, who misclassify workers, who create an unlevel playing field for law-abiding employers, and who rob New York State and its taxpayers of badly needed resources."

The full report can be found online at: <http://www.nysenate.gov/press-release/labor-committee-report-urges-lowest-responsible-bidder-be-defined-protect-workers-impr>.