

3300

2013-2014 Regular Sessions

I N S E N A T E

January 31, 2013

Introduced by Sen. NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government

AN ACT to amend the general municipal law, in relation to authorizing the city of Auburn to prefer businesses located in the county of Cayuga in awarding public contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 103 of the general municipal law,
2 as amended by section 1 of chapter 2 of the laws of 2012, is amended to
3 read as follows:
4 1. Except as otherwise expressly provided by an act of the legislature
5 or by a local law adopted prior to September first, nineteen hundred
6 fifty-three, all contracts for public work involving an expenditure of
7 more than thirty-five thousand dollars and all purchase contracts
8 involving an expenditure of more than twenty thousand dollars, shall be
9 awarded by the appropriate officer, board or agency of a political
10 subdivision or of any district therein including but not limited to a
11 soil conservation district to the lowest responsible bidder furnishing
12 the required security after advertisement for sealed bids in the manner
13 provided by this section[,]; provided, however, that purchase contracts
14 (including contracts for service work, but excluding any purchase
15 contracts necessary for the completion of a public works contract pursu-
16 ant to article eight of the labor law) may be awarded on the basis of
17 best value, as defined in section one hundred sixty-three of the state
18 finance law, to a responsive and responsible bidder or offerer in the
19 manner provided by this section except that in a political subdivision
20 other than a city with a population of one million inhabitants or more
21 or any district, board or agency with jurisdiction exclusively therein
22 the use of best value for awarding a purchase contract or purchase
23 contracts must be authorized by local law or, in the case of a district
24 corporation, school district or board of cooperative educational

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

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1 services, by rule, regulation or resolution adopted at a public meeting;
2 PROVIDED FURTHER, HOWEVER, THAT IN THE CITY OF AUBURN, FOR PUBLIC WORKS
3 AND PURCHASE CONTRACTS UP TO ONE HUNDRED THOUSAND DOLLARS, SUCH
4 CONTRACTS MAY BE AWARDED TO THE RESPONSIBLE BIDDER WHOSE BID IS WITHIN
5 FIVE PERCENT OF THE BID OF THE LOWEST RESPONSIBLE BIDDER AND IF THE
6 PRINCIPAL PLACE OF BUSINESS OF SUCH BIDDER IS LOCATED WITHIN THE COUNTY
7 OF CAYUGA. In any case where a responsible bidder's or responsible
8 offerer's gross price is reducible by an allowance for the value of used
9 machinery, equipment, apparatus or tools to be traded in by a political
10 subdivision, the gross price shall be reduced by the amount of such
11 allowance, for the purpose of determining the best value. In cases
12 where two or more responsible bidders furnishing the required security
13 submit identical bids as to price, such officer, board or agency may
14 award the contract to any of such bidders. Such officer, board or agency
15 may, in his or her or its discretion, reject all bids or offers and
16 readvertise for new bids or offers in the manner provided by this
17 section. In determining whether a purchase is an expenditure within the
18 discretionary threshold amounts established by this subdivision, the
19 officer, board or agency of a political subdivision or of any district
20 therein shall consider the reasonably expected aggregate amount of all
21 purchases of the same commodities, services or technology to be made
22 within the twelve-month period commencing on the date of purchase.
23 Purchases of commodities, services or technology shall not be arti-
24 ficially divided for the purpose of satisfying the discretionary buying
25 thresholds established by this subdivision. A change to or a renewal of
26 a discretionary purchase shall not be permitted if the change or renewal
27 would bring the reasonably expected aggregate amount of all purchases of
28 the same commodities, services or technology from the same provider
29 within the twelve-month period commencing on the date of the first
30 purchase to an amount greater than the discretionary buying threshold
31 amount. For purposes of this section, "sealed bids" and "sealed offers",
32 as that term applies to purchase contracts, (including contracts for
33 service work, but excluding any purchase contracts necessary for the
34 completion of a public works contract pursuant to article eight of the
35 labor law) shall include bids and offers submitted in an electronic
36 format including submission of the statement of non-collusion required
37 by section one hundred three-d of this article, provided that the
38 governing board of the political subdivision or district, by resolution,
39 has authorized the receipt of bids and offers in such format. Submission
40 in electronic format may, for technology contracts only, be required as
41 the sole method for the submission of bids and offers. Bids and offers
42 submitted in an electronic format shall be transmitted by bidders and
43 offerers to the receiving device designated by the political subdivision
44 or district. Any method used to receive electronic bids and offers shall
45 comply with article three of the state technology law, and any rules and
46 regulations promulgated and guidelines developed thereunder and, at a
47 minimum, must (a) document the time and date of receipt of each bid and
48 offer received electronically; (b) authenticate the identity of the
49 sender; (c) ensure the security of the information transmitted; and (d)
50 ensure the confidentiality of the bid or offer until the time and date
51 established for the opening of bids or offers. The timely submission of
52 an electronic bid or offer in compliance with instructions provided for
53 such submission in the advertisement for bids or offers and/or the spec-
54 ifications shall be the responsibility solely of each bidder or offerer
55 or prospective bidder or offerer. No political subdivision or district
56 therein shall incur any liability from delays of or interruptions in the

1 receiving device designated for the submission and receipt of electronic
2 bids and offers.

3 S 2. Subdivision 1 of section 103 of the general municipal law, as
4 amended by section 2 of chapter 2 of the laws of 2012, is amended to
5 read as follows:

6 1. Except as otherwise expressly provided by an act of the legislature
7 or by a local law adopted prior to September first, nineteen hundred
8 fifty-three, all contracts for public work involving an expenditure of
9 more than thirty-five thousand dollars and all purchase contracts
10 involving an expenditure of more than twenty thousand dollars, shall be
11 awarded by the appropriate officer, board or agency of a political
12 subdivision or of any district therein including but not limited to a
13 soil conservation district to the lowest responsible bidder furnishing
14 the required security after advertisement for sealed bids in the manner
15 provided by this section, provided, however, that purchase contracts
16 (including contracts for service work, but excluding any purchase
17 contracts necessary for the completion of a public works contract pursu-
18 ant to article eight of the labor law) may be awarded on the basis of
19 best value, as defined in section one hundred sixty-three of the state
20 finance law, to a responsive and responsible bidder or offerer in the
21 manner provided by this section except that in a political subdivision
22 other than a city with a population of onemillion inhabitants or more
23 or any district, board or agency with jurisdiction exclusively therein
24 the use of best value of awarding a purchase contract or purchase
25 contracts must be authorized by local law or, in the case of a district
26 corporation, school district or board of cooperative educational
27 services, by rule, regulation or resolution adopted at a public meeting.
28 In determining whether a purchase is an expenditure within the discre-
29 tionary threshold amounts established by this subdivision, the officer,
30 board or agency of a political subdivision or of any district therein
31 shall consider the reasonably expected aggregate amount of all purchases
32 of the same commodities, services or technology to be made within the
33 twelve-month period commencing on the date of purchase. Purchases of
34 commodities, services or technology shall not be artificially divided
35 for the purpose of satisfying the discretionary buying thresholds estab-
36 lished by this subdivision. A change to or a renewal of a discretionary
37 purchase shall not be permitted if the change or renewal would bring the
38 reasonably expected aggregate amount of all purchases of the same
39 commodities, services or technology from the same provider within the
40 twelve-month period commencing on the date of the first purchase to an
41 amount greater than the discretionary buying threshold amount. In any
42 case where a responsible bidder's or responsible offerer's gross price
43 is reducible by an allowance for the value of used machinery, equipment,
44 apparatus or tools to be traded in by a political subdivision, the gross
45 price shall be reduced by the amount of such allowance, for the purpose
46 of determining the low bid or best value. In cases where two or more
47 responsible bidders furnishing the required security submit identical
48 bids as to price, such officer, board or agency may award the contract
49 to any of such bidders. Such officer, board or agency may, in his, her
50 or its discretion, reject all bids or offers and readvertise for new
51 bids or offers in the manner provided by this section; PROVIDED, HOWEV-
52 ER, THAT IN THE CITY OF AUBURN, FOR PUBLIC WORKS AND PURCHASE CONTRACTS
53 UP TO ONE HUNDRED THOUSAND DOLLARS, SUCH CONTRACTS MAY BE AWARDED TO THE
54 RESPONSIBLE BIDDER WHOSE BID IS WITHIN FIVE PERCENT OF THE BID OF THE
55 LOWEST RESPONSIBLE BIDDER AND IF THE PRINCIPAL PLACE OF BUSINESS OF SUCH
56 BIDDER IS LOCATED WITHIN THE COUNTY OF CAYUGA.

1 S 3. This act shall take effect immediately, provided that the amend-
2 ments to subdivision 1 of section 103 of the general municipal law made
3 by section one of this act shall be subject to the expiration and rever-
4 sion of such subdivision pursuant to subdivision (a) of section 41 of
5 part X of chapter 62 of the laws of 2003, as amended, when upon such
6 date the provisions of section two of this act shall take effect.