

5575

2013-2014 Regular Sessions

I N S E N A T E

May 22, 2013

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Cities

AN ACT to amend the general municipal law, in relation to contracts for public work in a city having a population of one million or more

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. (A) Except as otherwise expressly provided by an act of the legis-
5 lature or by a local law adopted prior to September first, nineteen
6 hundred fifty-three, all contracts for public work involving an expendi-
7 ture of more than thirty-five thousand dollars and all purchase
8 contracts involving an expenditure of more than twenty thousand dollars,
9 shall be awarded by the appropriate officer, board or agency of a poli-
10 tical subdivision or of any district therein including but not limited
11 to a soil conservation district to the lowest responsible bidder
12 furnishing the required security after advertisement for sealed bids in
13 the manner provided by this section, provided, however, that purchase
14 contracts (including contracts for service work, but excluding any
15 purchase contracts necessary for the completion of a public works
16 contract pursuant to article eight of the labor law) may be awarded on
17 the basis of best value, as defined in section one hundred sixty-three
18 of the state finance law, to a responsive and responsible bidder or
19 offerer in the manner provided by this section except that in a poli-
20 tical subdivision other than a city with a population of one million
21 inhabitants or more or any district, board or agency with jurisdiction
22 exclusively therein the use of best value for awarding a purchase
23 contract or purchase contracts must be authorized by local law or, in
24 the case of a district corporation, school district or board of cooper-
25 ative educational services, by rule, regulation or resolution adopted at

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

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

53 (B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A CITY WITH
54 A POPULATION OF ONE MILLION OR MORE UNDERTAKING A PUBLIC WORK PROJECT
55 MAY INCLUDE IN THE CONTRACT FOR SUCH PROJECT ANY WORK DEEMED NECESSARY
56 OR DESIRABLE BY SUCH CITY FOR THE COMPLETION OF SUCH PROJECT THAT

1 REQUIRES THE MAINTENANCE, SUPPORT, PROTECTION OR OTHER ACCOMMODATION OF
2 ENERGY, TELECOMMUNICATIONS OR OTHER PRIVATE FACILITIES OR STRUCTURES NOT
3 OWNED BY SUCH CITY WHICH ARE LOCATED WITHIN, TRAVERSING OR ADJACENT TO
4 THE CONSTRUCTION AREA OF SUCH PROJECT, WHETHER ABOVE, BELOW OR AT GROUND
5 LEVEL, INCLUDING THE REMOVAL, RELOCATION, ALTERATION, REPLACEMENT,
6 RECONSTRUCTION OR IMPROVEMENT OF SUCH FACILITIES OR STRUCTURES, AND SUCH
7 WORK SHALL BE DEEMED PUBLIC WORK FOR THE PURPOSES OF THIS SECTION,
8 PROVIDED, HOWEVER, THAT THE COSTS OF SUCH WORK, INCLUDING ANY INCRE-
9 MENTAL OR ADMINISTRATIVE COSTS ATTRIBUTABLE TO SUCH WORK, ARE NOT BORNE
10 BY SUCH CITY, EXCEPT AS OTHERWISE PROVIDED BY CHAPTER THREE HUNDRED
11 FIFTY-SEVEN OF THE LAWS OF NINETEEN HUNDRED EIGHTY-EIGHT.

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

15 1. (A) Except as otherwise expressly provided by an act of the legis-
16 lature or by a local law adopted prior to September first, nineteen
17 hundred fifty-three, all contracts for public work involving an expendi-
18 ture of more than thirty-five thousand dollars and all purchase
19 contracts involving an expenditure of more than twenty thousand dollars,
20 shall be awarded by the appropriate officer, board or agency of a poli-
21 tical subdivision or of any district therein including but not limited
22 to a soil conservation district to the lowest responsible bidder
23 furnishing the required security after advertisement for sealed bids in
24 the manner provided by this section, provided, however, that purchase
25 contracts (including contracts for service work, but excluding any
26 purchase contracts necessary for the completion of a public works
27 contract pursuant to article eight of the labor law) may be awarded on
28 the basis of best value, as defined in section one hundred sixty-three
29 of the state finance law, to a responsive and responsible bidder or
30 offerer in the manner provided by this section except that in a poli-
31 tical subdivision other than a city with a population of one million
32 inhabitants or more or any district, board or agency with jurisdiction
33 exclusively therein the use of best value of awarding a purchase
34 contract or purchase contracts must be authorized by local law or, in
35 the case of a district corporation, school district or board of cooper-
36 ative educational services, by rule, regulation or resolution adopted at
37 a public meeting. In determining whether a purchase is an expenditure
38 within the discretionary threshold amounts established by this subdivi-
39 sion, the officer, board or agency of a political subdivision or of any
40 district therein shall consider the reasonably expected aggregate amount
41 of all purchases of the same commodities, services or technology to be
42 made within the twelve-month period commencing on the date of purchase.
43 Purchases of commodities, services or technology shall not be arti-
44 ficially divided for the purpose of satisfying the discretionary buying
45 thresholds established by this subdivision. A change to or a renewal of
46 a discretionary purchase shall not be permitted if the change or renewal
47 would bring the reasonably expected aggregate amount of all purchases of
48 the same commodities, services or technology from the same provider
49 within the twelve-month period commencing on the date of the first
50 purchase to an amount greater than the discretionary buying threshold
51 amount. In any case where a responsible bidder's or responsible
52 offerer's gross price is reducible by an allowance for the value of used
53 machinery, equipment, apparatus or tools to be traded in by a political
54 subdivision, the gross price shall be reduced by the amount of such
55 allowance, for the purpose of determining the low bid or best value. In
56 cases where two or more responsible bidders furnishing the required

1 security submit identical bids as to price, such officer, board or agen-
2 cy may award the contract to any of such bidders. Such officer, board or
3 agency may, in his, her or its discretion, reject all bids or offers and
4 readvertise for new bids or offers in the manner provided by this
5 section.

6 (B) NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A CITY WITH
7 A POPULATION OF ONE MILLION OR MORE UNDERTAKING A PUBLIC WORK PROJECT
8 MAY INCLUDE IN THE CONTRACT FOR SUCH PROJECT ANY WORK DEEMED NECESSARY
9 OR DESIRABLE BY SUCH CITY FOR THE COMPLETION OF SUCH PROJECT THAT
10 REQUIRES THE MAINTENANCE, SUPPORT, PROTECTION OR OTHER ACCOMMODATION OF
11 ENERGY, TELECOMMUNICATIONS OR OTHER PRIVATE FACILITIES OR STRUCTURES NOT
12 OWNED BY SUCH CITY WHICH ARE LOCATED WITHIN, TRAVERSING OR ADJACENT TO
13 THE CONSTRUCTION AREA OF SUCH PROJECT, WHETHER ABOVE, BELOW OR AT GROUND
14 LEVEL, INCLUDING THE REMOVAL, RELOCATION, ALTERATION, REPLACEMENT,
15 RECONSTRUCTION OR IMPROVEMENT OF SUCH FACILITIES OR STRUCTURES, AND SUCH
16 WORK SHALL BE DEEMED PUBLIC WORK FOR THE PURPOSES OF THIS SECTION,
17 PROVIDED, HOWEVER, THAT THE COSTS OF SUCH WORK, INCLUDING ANY INCRE-
18 MENTAL OR ADMINISTRATIVE COSTS ATTRIBUTABLE TO SUCH WORK, ARE NOT BORNE
19 BY SUCH CITY, EXCEPT AS OTHERWISE PROVIDED BY CHAPTER THREE HUNDRED
20 FIFTY-SEVEN OF THE LAWS OF NINETEEN HUNDRED EIGHTY-EIGHT.

21 S 3. This act shall take effect immediately, provided that the amend-
22 ments to subdivision 1 of section 103 of the general municipal law, made
23 by section one of this act, shall be subject to the expiration and
24 reversion of such subdivision pursuant to section 41 of part X of chap-
25 ter 62 of the laws of 2003, as amended, when upon such date the
26 provisions of section two of this act shall take effect.