

STATE OF NEW YORK

8238

2023-2024 Regular Sessions

IN ASSEMBLY

November 6, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to public works requiring advertising for bids and offers; and to amend the highway law, in relation to consolidated local highway assistance payments

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~~] seventy thousand dollars and all purchase
8 contracts involving an expenditure of more than [~~twenty~~] forty thousand
9 dollars, shall be awarded by the appropriate officer, board or agency of
10 a political subdivision or of any district therein including but not
11 limited 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-

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

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

54 § 2. Subdivision 1 of section 103 of the general municipal law, as
55 amended by section 2 of chapter 2 of the laws of 2012, is amended to
56 read as follows:

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

48 § 3. Paragraph (e) of subdivision 4 of section 10-c of the highway
49 law, as amended by section 1 of part A of chapter 58 of the laws of
50 2020, is amended to read as follows:

51 (e) Funds allocated for local street or highway projects under this
52 subdivision shall be used to undertake work on a project [~~either~~] with
53 the municipality's own forces [~~or by contract, provided however, that~~
54 ~~whenever the estimate for the construction contract work exceeds one~~
55 ~~hundred thousand dollars but does not exceed three hundred fifty thou-~~
56 ~~sand dollars such work must be performed either with the municipality's~~

1 ~~own forces~~] or by contract let by competitive bid in accordance with the
2 provisions of section one hundred three of the general municipal law
3 ~~[and provided further, however, that whenever the estimate for the~~
4 ~~construction contract work exceeds three hundred fifty thousand dollars~~
5 ~~such work must be performed by contract let by competitive bid in~~
6 ~~accordance with the provisions of section one hundred three of the~~
7 ~~general municipal law]~~.

8 § 4. This act shall take effect on the ninetieth day after it shall
9 have become a law; provided, however, that the amendments to subdivision
10 1 of section 103 of the general municipal law made by section one of
11 this act shall be subject to the expiration and reversion of such subdivi-
12 sion pursuant to subdivision (a) of section 41 of part X of chapter 62
13 of the laws of 2003, as amended, when upon such date the provisions of
14 section two of this act shall take effect.