

STATE OF NEW YORK

7362

2023-2024 Regular Sessions

IN SENATE

May 19, 2023

Introduced by Sen. COONEY -- (at request of the NYC Mayor's Office of Contract Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Procurement and Contracts

AN ACT to amend the general municipal law and part X of chapter 62 of the laws of 2003 amending the general business law and other laws generally relating to implementing the state fiscal plan for the 2003-2004 state fiscal year, in relation to electronic bidding

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

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

LBD11218-01-3

contracts must be authorized by local law or, in the case of a district corporation, school district or board of cooperative educational services, by rule, regulation or resolution adopted at a public meeting. In any case where a responsible bidder's or responsible offerer's gross price is reducible by an allowance for the value of used machinery, equipment, apparatus or tools to be traded in by a political subdivision, the gross price shall be reduced by the amount of such allowance, for the purpose of determining the best value. In cases where two or more responsible bidders furnishing the required security submit identical bids as to price, such officer, board or agency may award the contract to any of such bidders. Such officer, board or agency may, in his or her or its discretion, reject all bids or offers and readvertise for new bids or offers in the manner provided by this section. In determining whether a purchase is an expenditure within the discretionary threshold amounts established by this subdivision, the officer, board or agency of a political subdivision or of any district therein shall consider the reasonably expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of purchase. Purchases of commodities, services or technology shall not be artificially divided for the purpose of satisfying the discretionary buying thresholds established by this subdivision. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchases of the same commodities, services or technology from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount. For purposes of this section, "sealed bids" and "sealed offers", as that term applies to purchase contracts, (including contracts for service work, but excluding any purchase contracts necessary for the completion of a public works contract pursuant to article eight of the labor law) shall include bids and offers submitted in an electronic format including submission of the statement of non-collusion required by section one hundred three-d of this article, provided that the governing board of the political subdivision or district, by resolution, has authorized the receipt of bids and offers in such format. Submission in electronic format may, for technology contracts only, be required as the sole method for the submission of bids and offers. Notwithstanding any other provision of this section, the appropriate officer, board or agency of a city with a population of one million inhabitants or more, or any district, board or agency with jurisdiction exclusively within such city, may authorize or require bids and offers for any contract to be submitted in an electronic format, and with respect to such contracts, the terms "sealed bids" and "sealed offers" shall include bids and offers submitted in an electronic format, including submission of the statement of non-collusion required by section one hundred three-d of this article. Bids and offers submitted in an electronic format shall be transmitted by bidders and offerers to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids and offers shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must (a) document the time and date of receipt of each bid and offer received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or

1 offers. The timely submission of an electronic bid or offer in compli-
2 ance with instructions provided for such submission in the advertisement
3 for bids or offers and/or the specifications shall be the responsibility
4 solely of each bidder or offerer or prospective bidder or offerer. No
5 political subdivision or district therein shall incur any liability from
6 delays of or interruptions in the receiving device designated for the
7 submission and receipt of electronic bids and offers.

8 § 2. Subdivision 2 of section 103 of the general municipal law, as
9 amended by section 1 of chapter 367 of the laws of 2014, is amended to
10 read as follows:

11 2. Advertisement for bids and offers shall be published in the offi-
12 cial newspaper or newspapers, if any, or otherwise in a newspaper or
13 newspapers designated for such purpose and may be published in the
14 procurement opportunities newsletter pursuant to article four-C of the
15 economic development law. Such advertisement shall contain a statement
16 of the time when and place where all bids received pursuant to such
17 notice will be publicly opened and read and where the identity of all
18 offerers will be publicly disclosed, and the designation of the receiv-
19 ing device if the political subdivision or district, or in a city with a
20 population of one million inhabitants or more or any district, board or
21 agency with jurisdiction exclusively therein, the appropriate officer,
22 district, board or agency, has authorized or required the receipt of
23 bids and offers in an electronic format. Such board or agency may by
24 resolution designate any officer or employee to open the bids and offers
25 at the time and place specified in the notice. Such designee shall make
26 a record of such bids and offers in such form and detail as the board or
27 agency shall prescribe and present the same at the next regular or
28 special meeting of such board or agency. All bids received shall be
29 publicly opened and read at the time and place so specified and the
30 identity of all offerers shall be publicly disclosed at the time and
31 place so specified. Notwithstanding any other provision of this section,
32 the appropriate officer, board or agency of a city with a population of
33 one million inhabitants or more, or any district, board or agency with
34 jurisdiction exclusively within such city, shall conduct a public open-
35 ing and reading of bids or identification of offerers, provided that
36 such district, officer, board or agency may conduct such opening and
37 reading or identification by means of livestreaming on a publicly acces-
38 sible website listed in the advertisement at a time and date specified
39 in such advertisement, and post a record of such bids or offers and any
40 other required information on a website maintained or controlled by such
41 district, officer, board or agency on such date or as soon as practica-
42 ble thereafter. At least five days shall elapse between the first publi-
43 cation of such advertisement and the date so specified for the opening
44 and reading of bids and offers.

45 § 3. Section 41 of part X of chapter 62 of the laws of 2003 amending
46 the general business law and other laws generally relating to implement-
47 ing the state fiscal plan for the 2003-2004 state fiscal year, as
48 amended by chapter 70 of the laws of 2018, is amended to read as
49 follows:

50 § 41. This act shall take effect immediately; provided, however,

51 (a) that sections four, five, six, seven, eight and nine of this act
52 shall expire June 1, [~~2023~~] 2028 when upon such date the provisions of
53 such sections shall be deemed repealed;

54 (b) section thirty-nine of this act shall be deemed to have been in
55 full force and effect on and after April 1, 2003; provided that the
56 provisions of subdivision 9 of section 54 of the state finance law, as

1 added by section thirty-nine of this act, shall expire and be deemed
2 repealed at the close of the state fiscal year ending on March 31, 2004;
3 and

4 (c) section forty of this act shall be deemed to have been in full
5 force and effect on and after April 1, 2003.

6 § 4. This act shall take effect immediately; provided, however, that:

7 (a) the amendments to subdivisions 1 and 2 of section 103 of the
8 general municipal law made by sections one and two of this act shall not
9 apply to any solicitation released prior to the date upon which this act
10 takes effect;

11 (b) the amendments to subdivisions 1 and 2 of section 103 of the
12 general municipal law made by sections one and two of this act shall not
13 affect the expiration and reversion of such subdivisions as provided in
14 subdivision (a) of section 41 of part X of chapter 62 of the laws of
15 2003, as amended, and shall expire and be deemed repealed therewith; and

16 (c) if this act shall become a law after June 1, 2023, the amendments
17 to subdivision (a) of section 41 of part X of chapter 62 of the laws of
18 2003, made by section three of this act shall be deemed to have been in
19 effect on and after such date.