

1301

2009-2010 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 7, 2009

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Introduced by M. of A. WRIGHT, HOOPER, SCHROEDER, CHRISTENSEN -- Multi-Sponsored by -- M. of A. AUBRY, COLTON, COOK, DINOWITZ, GREENE, JOHN, MAGEE, MILLMAN, PHEFFER, REILLY -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law and the state finance law, in relation to granting preferences to New York state domiciliaries in the awarding of contracts for public work

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 chapter 741 of the laws of 2005, is amended to read as  
3     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 twenty thousand dollars and all purchase contracts involving  
8     an expenditure of more than ten thousand dollars, shall be awarded by  
9     the appropriate officer, board or agency of a political subdivision or  
10    of any district therein including but not limited to a soil conservation  
11    district, to the lowest responsible bidder furnishing the required secu-  
12    rity after advertisement for sealed bids in the manner provided by this  
13    section. In any case where a responsible bidder's gross price is reduci-  
14    ble by an allowance for the value of used machinery, equipment, appara-  
15    tus or tools to be traded in by a political subdivision, the gross price  
16    shall be reduced by the amount of such allowance, for the purpose of  
17    determining the low bid. NOTWITHSTANDING THE FOREGOING, IN ANY CASE  
18    WHERE A RESPONSIBLE BIDDER WHO IS A NEW YORK STATE RESIDENT, FIRM OR  
19    CORPORATION AND WHO IS FURNISHING THE REQUIRED SECURITY IS FOUND BY SUCH  
20    OFFICER, BOARD OR AGENCY TO BE WITHIN TWO PERCENT OF THE BID OF THE  
21    LOWEST RESPONSIBLE BIDDER, SUCH OFFICER, BOARD OR AGENCY MAY PREFER SUCH

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

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1 RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE BIDDER AND AWARD THE  
2 CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED, HOWEVER, WHERE MORE THAN  
3 ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFICER, BOARD OR AGEN-  
4 CY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPONSIBLE BIDDER SUBMIT-  
5 TING THE LOWEST BID. In cases where two or more responsible bidders  
6 furnishing the required security submit identical bids as to price, such  
7 officer, board or agency may award the contract to any of such bidders.  
8 Such officer, board or agency may, in his or its discretion, reject all  
9 bids and readvertise for new bids in the manner provided by this  
10 section. For purposes of this section, "sealed bids", as that term  
11 applies to purchase contracts, shall include bids submitted in an elec-  
12 tronic format, provided that the governing board of the political subdi-  
13 vision or district, by resolution, has authorized the receipt of bids in  
14 such format. Submission in electronic format may not, however, be  
15 required as the sole method for the submission of bids. Bids submitted  
16 in an electronic format shall be transmitted by bidders to the receiving  
17 device designated by the political subdivision or district. Any method  
18 used to receive electronic bids shall comply with article three of the  
19 state technology law, and any rules and regulations promulgated and  
20 guidelines developed thereunder and, at a minimum, must (a) document the  
21 time and date of receipt of each bid received electronically; (b)  
22 authenticate the identity of the sender; (c) ensure the security of the  
23 information transmitted; and (d) ensure the confidentiality of the bid  
24 until the time and date established for the opening of bids. The timely  
25 submission of an electronic bid in compliance with instructions provided  
26 for such submission in the advertisement for bids and/or the specifica-  
27 tions shall be the responsibility solely of each bidder or prospective  
28 bidder. No political subdivision or district therein shall incur any  
29 liability from delays of or interruptions in the receiving device desig-  
30 nated for the submission and receipt of electronic bids.

31 S 2. Subdivision 1 of section 103 of the general municipal law, as  
32 amended by chapter 413 of the laws of 1991, is amended to read as  
33 follows:

34 1. Except as otherwise expressly provided by an act of the legislature  
35 or by a local law adopted prior to September first, nineteen hundred  
36 fifty-three, all contracts for public work involving an expenditure of  
37 more than twenty thousand dollars and all purchase contracts involving  
38 an expenditure of more than ten thousand dollars, shall be awarded by  
39 the appropriate officer, board or agency of a political subdivision or  
40 of any district therein including but not limited to a soil conservation  
41 district, to the lowest responsible bidder furnishing the required secu-  
42 rity after advertisement for sealed bids in the manner provided by this  
43 section. In any case where a responsible bidder's gross price is reduci-  
44 ble by an allowance for the value of used machinery, equipment, appara-  
45 tus or tools to be traded in by a political subdivision, the gross price  
46 shall be reduced by the amount of such allowance, for the purpose of  
47 determining the low bid. NOTWITHSTANDING THE FOREGOING, IN ANY CASE  
48 WHERE A RESPONSIBLE BIDDER WHO IS A NEW YORK STATE RESIDENT, FIRM OR  
49 CORPORATION AND WHO IS FURNISHING THE REQUIRED SECURITY IS FOUND BY SUCH  
50 OFFICER, BOARD OR AGENCY TO BE WITHIN TWO PERCENT OF THE BID OF THE  
51 LOWEST RESPONSIBLE BIDDER, SUCH OFFICER, BOARD OR AGENCY MAY PREFER SUCH  
52 RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE BIDDER AND AWARD THE  
53 CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED, HOWEVER, WHERE MORE THAN  
54 ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFICER, BOARD OR AGEN-  
55 CY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPONSIBLE BIDDER SUBMIT-  
56 TING THE LOWEST BID. In cases where two or more responsible bidders

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

6 S 3. Section 135 of the state finance law is amended by adding a new  
7 closing paragraph to read as follows:

8 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHENEVER THE LOWEST  
9 RESPONSIBLE BIDDER IS A FOREIGN OR OUT-OF-STATE INDIVIDUAL, FIRM OR  
10 CORPORATION AND AT LEAST ONE NEW YORK STATE RESIDENT, FIRM OR CORPO-  
11 RATION HAS SUBMITTED A RESPONSIBLE BID WHICH IS WITHIN TWO PERCENT OF  
12 THE LOWEST RESPONSIBLE BID, THE CONTRACT MAY BE AWARDED TO THE LOWEST  
13 RESPONSIBLE BIDDER WHO IS A NEW YORK STATE RESIDENT, FIRM OR CORPO-  
14 RATION; PROVIDED, HOWEVER, WHERE MORE THAN ONE RESPONSIBLE BIDDER QUALI-  
15 FIES HEREUNDER, SUCH OFFICER, BOARD OR AGENCY SHALL AWARD THE CONTRACT  
16 TO SUCH QUALIFIED RESPONSIBLE BIDDER SUBMITTING THE LOWEST BID.

17 S 4. This act shall take effect on the first of September next  
18 succeeding the date on which it shall have become a law; provided,  
19 however, that the amendments to subdivision 1 of section 103 of the  
20 general municipal law made by section one of this act shall not affect  
21 the expiration and reversion of such subdivision as provided in subdivi-  
22 sion (a) of section 41 of part X of chapter 62 of the laws of 2003, as  
23 amended, when upon such date the provisions of section two of this act  
24 shall take effect.