

1549

2009-2010 Regular Sessions

I N S E N A T E

February 2, 2009

Introduced by Sens. STAVISKY, ADAMS, DIAZ, C. JOHNSON, ONORATO, PARKER
-- 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 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 ASSEM-
BLY, 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
22 RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE BIDDER AND AWARD THE
23 CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED, HOWEVER, WHERE MORE THAN

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

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

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

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

1 Such officer, board or agency may, in his or its discretion, reject all
2 bids and readvertise for new bids in the manner provided by this
3 section.

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

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

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