

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. LITTLE -- 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, in relation to the awarding of contracts, payments by contractors to subcontractors and local government procurement practices

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] FIFTY thousand dollars and all purchase contracts
8 involving an expenditure of more than [ten] TWENTY thousand dollars,
9 shall be awarded by the appropriate officer, board or agency of a political
10 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. In any case where a responsible
14 bidder's gross price is reducible by an allowance for the value of used
15 machinery, equipment, apparatus or tools to be traded in by a political
16 subdivision, the gross price shall be reduced by the amount of such
17 allowance, for the purpose of determining the low bid. In cases where
18 two or more responsible bidders furnishing the required security submit
19 identical bids as to price, such officer, board or agency may award the
20 contract to any of such bidders. Such officer, board or agency may, in
21 his or its discretion, reject all bids and readvertise for new bids in
22 the manner provided by this section. For purposes of this section,
23 "sealed bids", as that term applies to purchase contracts, shall include

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

LBD00972-01-9

1 bids submitted in an electronic format, provided that the governing
2 board of the political subdivision or district, by resolution, has
3 authorized the receipt of bids in such format. Submission in electronic
4 format may not, however, be required as the sole method for the
5 submission of bids. Bids submitted in an electronic format shall be
6 transmitted by bidders to the receiving device designated by the poli-
7 tical subdivision or district. Any method used to receive electronic
8 bids shall comply with article three of the state technology law, and
9 any rules and regulations promulgated and guidelines developed there-
10 under and, at a minimum, must (a) document the time and date of receipt
11 of each bid received electronically; (b) authenticate the identity of
12 the sender; (c) ensure the security of the information transmitted; and
13 (d) ensure the confidentiality of the bid until the time and date estab-
14 lished for the opening of bids. The timely submission of an electronic
15 bid in compliance with instructions provided for such submission in the
16 advertisement for bids and/or the specifications shall be the responsi-
17 bility solely of each bidder or prospective bidder. No political subdi-
18 vision or district therein shall incur any liability from delays of or
19 interruptions in the receiving device designated for the submission and
20 receipt of electronic bids.

21 S 2. Section 103 of the general municipal law is amended by adding
22 three new subdivisions 1-b, 1-c and 16 to read as follows:

23 1-B. WHEN THE OFFICER, BOARD OR AGENCY OF ANY POLITICAL SUBDIVISION
24 OR OF ANY DISTRICT THEREIN CHARGED WITH THE AWARDED OF CONTRACTS UNDER
25 THIS SECTION DETERMINES THAT IT IS IN THE BEST INTEREST OF THE POLITICAL
26 SUBDIVISION OR DISTRICT THEREIN, THEY MAY AWARD CONTRACTS FOR SERVICES
27 ON THE BASIS OF BEST VALUE AS DEFINED IN SECTION ONE HUNDRED SIXTY-THREE
28 OF THE STATE FINANCE LAW TO RESPONSIVE AND RESPONSIBLE OFFERERS.
29 NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A CONTRACT FOR
30 SERVICES MAY BE AWARDED ON THE BASIS OF BEST VALUE PROVIDED THAT THE
31 CONTRACTING PROCESS AND AWARD SHALL COMPLY WITH THE GUIDELINES ESTAB-
32 LISHED UNDER SECTION ONE HUNDRED SIXTY-THREE OF THE STATE FINANCE LAW BY
33 THE STATE PROCUREMENT COUNCIL. ANY PROCUREMENT MADE UNDER THIS SUBDIVI-
34 SION SHALL BE APPROVED BY THE GOVERNING BODY OF THE PURCHASING POLITICAL
35 SUBDIVISION OR DISTRICT THEREIN.

36 1-C. A POLITICAL SUBDIVISION OR ANY DISTRICT THEREIN SHALL HAVE THE
37 OPTION OF PURCHASING INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS HARD-
38 WARE, SOFTWARE AND PROFESSIONAL SERVICES THROUGH COOPERATIVE PURCHASING
39 PERMISSIBLE PURSUANT TO FEDERAL GENERAL SERVICES ADMINISTRATION INFORMA-
40 TION TECHNOLOGY SCHEDULE SEVENTY OR ANY SUCCESSOR SCHEDULE. A POLITICAL
41 SUBDIVISION OR ANY DISTRICT THEREIN THAT PURCHASES THROUGH GENERAL
42 SERVICES ADMINISTRATION SCHEDULE SEVENTY, INFORMATION TECHNOLOGY AND
43 CONSOLIDATED SCHEDULE CONTRACTS SHALL COMPLY WITH FEDERAL SCHEDULE
44 ORDERING PROCEDURES AS PROVIDED IN FEDERAL ACQUISITION REGULATION
45 8.405-1 OR 8.405-2, WHICHEVER IS APPLICABLE. ADHERENCE TO SUCH PROCEDURE
46 SHALL CONSTITUTE COMPLIANCE WITH THE COMPETITIVE BIDDING REQUIREMENTS
47 UNDER THIS SECTION.

48 16. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION
49 AND IN ADDITION TO THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION
50 AND SECTION ONE HUNDRED FOUR OF THIS ARTICLE, ANY OFFICER, BOARD OR
51 AGENCY OF A POLITICAL SUBDIVISION OR OF ANY DISTRICT THEREIN AUTHORIZED
52 TO MAKE PURCHASES OF MATERIALS, EQUIPMENT AND SUPPLIES MAY MAKE SUCH
53 PURCHASES AS MAY BE REQUIRED BY SUCH POLITICAL SUBDIVISION OR ANY
54 DISTRICT THEREIN THROUGH THE USE OF A CONTRACT LET BY ANY OTHER STATE OR
55 POLITICAL SUBDIVISION IF SUCH CONTRACT WAS LET IN ACCORDANCE WITH
56 COMPETITIVE BIDDING REQUIREMENTS THAT ARE CONSISTENT WITH THIS SECTION

1 AND WITH THE INTENT OF EXTENDING ITS USE TO CERTAIN OTHER GOVERNMENTAL
2 ENTITIES. PRIOR TO MAKING SUCH A PURCHASE, THE GOVERNING BOARD OF THE
3 POLITICAL SUBDIVISION OR DISTRICT MAKING THE PURCHASE SHALL DETERMINE,
4 UPON REVIEW OF ANY NECESSARY DOCUMENTATION AND, AS APPROPRIATE, UPON
5 ADVICE OF ITS COUNSEL, THAT THE REQUIREMENTS OF THIS SUBDIVISION HAVE
6 BEEN MET, AND SHALL CERTIFY, BY RESOLUTION, THAT SUCH PURCHASE IS
7 PERMITTED UNDER THE PROCUREMENT POLICIES AND PROCEDURES OF THE POLITICAL
8 SUBDIVISION OR DISTRICT, ADOPTED PURSUANT TO SECTION ONE HUNDRED FOUR-B
9 OF THIS ARTICLE.

10 S 3. This act shall take effect immediately provided that the amend-
11 ments to subdivision 1 of section 103 of the general municipal law made
12 by section one of this act shall not affect the expiration of such
13 subdivision and shall be deemed to expire therewith.