

8692

2011-2012 Regular Sessions

I N A S S E M B L Y

December 28, 2011

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

AN ACT to amend the general municipal law, in relation to obtaining best value for purchase contracts

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 a chapter of the laws of 2011, amending the
3 general municipal law relating to obtaining best value for purchase
4 contracts, as proposed in legislative bills numbers S. 4753-A and A.
5 7357-A, is amended to read as follows:
6 1. Except as otherwise expressly provided by an act of the legislature
7 or by a local law adopted prior to September first, nineteen hundred
8 fifty-three, all contracts for public work involving an expenditure of
9 more than thirty-five thousand dollars and all purchase contracts
10 involving an expenditure of more than twenty thousand dollars, shall be
11 awarded by the appropriate officer, board or agency of a political
12 subdivision or of any district therein including but not limited to a
13 soil conservation district [in the following manner: (a) contracts for
14 public work shall be awarded] to the lowest responsible bidder furnishing
15 the required security after advertisement for sealed bids in the
16 manner provided by this section [and, (b)], PROVIDED, HOWEVER, THAT
17 purchase contracts (including contracts for service work, but excluding
18 any purchase contracts necessary for the completion of a public works
19 contract pursuant to article eight of the labor law) [shall] MAY be
20 awarded on the basis of best value, as defined in section one hundred
21 sixty-three of the state finance law, to a responsive and responsible
22 bidder or offerer in the manner provided by this section EXCEPT THAT IN
23 A POLITICAL SUBDIVISION OTHER THAN A CITY WITH A POPULATION OF ONE
24 MILLION INHABITANTS OR MORE OR ANY DISTRICT, BOARD OR AGENCY WITH JURIS-
25 DICTION EXCLUSIVELY THEREIN THE USE OF BEST VALUE FOR AWARDING A

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

A

LBD10947-07-2

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

1 S 2. Subdivision 1 of section 103 of the general municipal law, as
2 amended by section 2 of a chapter of the laws of 2011, amending the
3 general municipal law relating to obtaining best value for purchase
4 contracts, as proposed in legislative bills numbers S. 4753-A and A.
5 7357-A, is amended to read as follows:

6 1. Except as otherwise expressly provided by an act of the legislature
7 or by a local law adopted prior to September first, nineteen hundred
8 fifty-three, all contracts for public work involving an expenditure of
9 more than thirty-five thousand dollars and all purchase contracts
10 involving an expenditure of more than twenty thousand dollars, shall be
11 awarded by the appropriate officer, board or agency of a political
12 subdivision or of any district therein including but not limited to a
13 soil conservation district [in the following manner: (a) contracts for
14 public work shall be awarded] to the lowest responsible bidder furnish-
15 ing the required security after advertisement for sealed bids in the
16 manner provided by this section [and, (b)], PROVIDED, HOWEVER, THAT
17 purchase contracts (including contracts for service work, but excluding
18 any purchase contracts necessary for the completion of a public works
19 contract pursuant to article eight of the labor law) [shall] MAY be
20 awarded on the basis of best value, as defined in section one hundred
21 sixty-three of the state finance law, to a responsive and responsible
22 bidder or offerer in the manner provided by this section EXCEPT THAT IN
23 A POLITICAL SUBDIVISION OTHER THAN A CITY WITH A POPULATION OF ONE
24 MILLION INHABITANTS OR MORE OR ANY DISTRICT, BOARD OR AGENCY WITH JURIS-
25 DICTION EXCLUSIVELY THEREIN THE USE OF BEST VALUE OF AWARDING A PURCHASE
26 CONTRACT OR PURCHASE CONTRACTS MUST BE AUTHORIZED BY LOCAL LAW OR, IN
27 THE CASE OF A DISTRICT CORPORATION, SCHOOL DISTRICT OR BOARD OF COOPER-
28 ATIVE EDUCATIONAL SERVICES, BY RULE, REGULATION OR RESOLUTION ADOPTED AT
29 A PUBLIC MEETING. In determining whether a purchase is an expenditure
30 within the discretionary threshold amounts established by this subdivi-
31 sion, the officer, board or agency of a political subdivision or of any
32 district therein shall consider the reasonably expected aggregate amount
33 of all purchases of the same commodities, services or technology to be
34 made within the twelve-month period commencing on the date of purchase.
35 Purchases of commodities, services or technology shall not be arti-
36 ficially divided for the purpose of satisfying the discretionary buying
37 thresholds established by this subdivision. A change to or a renewal of
38 a discretionary purchase shall not be permitted if the change or renewal
39 would bring the reasonably expected aggregate amount of all purchases of
40 the same commodities, services or technology from the same provider
41 within the twelve-month period commencing on the date of the first
42 purchase to an amount greater than the discretionary buying threshold
43 amount. In any case where a responsible bidder's or responsible
44 offerer's gross price is reducible by an allowance for the value of used
45 machinery, equipment, apparatus or tools to be traded in by a political
46 subdivision, the gross price shall be reduced by the amount of such
47 allowance, for the purpose of determining the low bid or best value. In
48 cases where two or more responsible bidders furnishing the required
49 security submit identical bids as to price, such officer, board or agen-
50 cy may award the contract to any of such bidders. Such officer, board or
51 agency may, in his, her or its discretion, reject all bids or offers and
52 readvertise for new bids or offers in the manner provided by this
53 section.

54 S 3. This act shall take effect on the same date and in the same
55 manner as a chapter of the laws of 2011, amending the general municipal

1 law relating to obtaining best value for purchase contracts, as proposed
2 in legislative bills numbers S. 4753-A and A. 7357-A, takes effect.