

1788

2011-2012 Regular Sessions

I N   S E N A T E

January 12, 2011

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Introduced by Sen. STAVISKY -- 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 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 part FF of chapter 56 of the laws of 2010, is  
3     amended to 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. In any case where a responsible bidder's gross  
14    price is reducible by an allowance for the value of used machinery,  
15    equipment, apparatus or tools to be traded in by a political subdivi-  
16    sion, the gross price shall be reduced by the amount of such allowance,  
17    for the purpose of determining the low bid. NOTWITHSTANDING THE FOREGO-  
18    ING, IN ANY CASE WHERE A RESPONSIBLE BIDDER WHO IS A NEW YORK STATE  
19    RESIDENT, FIRM OR CORPORATION AND WHO IS FURNISHING THE REQUIRED SECURI-  
20    TY IS FOUND BY SUCH OFFICER, BOARD OR AGENCY TO BE WITHIN TWO PERCENT OF  
21    THE BID OF THE LOWEST RESPONSIBLE BIDDER, SUCH OFFICER, BOARD OR AGENCY  
22    MAY PREFER SUCH RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE BIDDER  
23    AND AWARD THE CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED, HOWEVER,  
24    WHERE MORE THAN ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFI-

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

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1 CER, BOARD OR AGENCY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPON-  
2 SIBLE BIDDER SUBMITTING THE LOWEST BID. In cases where two or more  
3 responsible bidders furnishing the required security submit identical  
4 bids as to price, such officer, board or agency may award the contract  
5 to any of such bidders. Such officer, board or agency may, in his or her  
6 or its discretion, reject all bids and readvertise for new bids in the  
7 manner provided by this section. In determining whether a purchase is an  
8 expenditure within the discretionary threshold amounts established by  
9 this subdivision, the officer, board or agency of a political subdivi-  
10 sion or of any district therein shall consider the reasonably expected  
11 aggregate amount of all purchases of the same commodities, services or  
12 technology to be made within the twelve-month period commencing on the  
13 date of purchase. Purchases of commodities, services or technology  
14 shall not be artificially divided for the purpose of satisfying the  
15 discretionary buying thresholds established by this subdivision. A  
16 change to or a renewal of a discretionary purchase shall not be permit-  
17 ted if the change or renewal would bring the reasonably expected aggre-  
18 gate amount of all purchases of the same commodities, services or tech-  
19 nology from the same provider within the twelve-month period commencing  
20 on the date of the first purchase to an amount greater than the discre-  
21 tionary buying threshold amount. For purposes of this section, "sealed  
22 bids", as that term applies to purchase contracts, shall include bids  
23 submitted in an electronic format including submission of the statement  
24 of non-collusion required by section one hundred three-d of this arti-  
25 cle, provided that the governing board of the political subdivision or  
26 district, by resolution, has authorized the receipt of bids in such  
27 format. Submission in electronic format may, for technology contracts  
28 only, be required as the sole method for the submission of bids. Bids  
29 submitted in an electronic format shall be transmitted by bidders to the  
30 receiving device designated by the political subdivision or district.  
31 Any method used to receive electronic bids shall comply with article  
32 three of the state technology law, and any rules and regulations promul-  
33 gated and guidelines developed thereunder and, at a minimum, must (a)  
34 document the time and date of receipt of each bid received electron-  
35 ically; (b) authenticate the identity of the sender; (c) ensure the  
36 security of the information transmitted; and (d) ensure the confiden-  
37 tiality of the bid until the time and date established for the opening  
38 of bids. The timely submission of an electronic bid in compliance with  
39 instructions provided for such submission in the advertisement for bids  
40 and/or the specifications shall be the responsibility solely of each  
41 bidder or prospective bidder. No political subdivision or district ther-  
42 ein shall incur any liability from delays of or interruptions in the  
43 receiving device designated for the submission and receipt of electronic  
44 bids.

45 S 2. Subdivision 1 of section 103 of the general municipal law, as  
46 amended by section 2 of part FF of chapter 56 of the laws of 2010, is  
47 amended to read as follows:

48 1. Except as otherwise expressly provided by an act of the legislature  
49 or by a local law adopted prior to September first, nineteen hundred  
50 fifty-three, all contracts for public work involving an expenditure of  
51 more than thirty-five thousand dollars and all purchase contracts  
52 involving an expenditure of more than twenty thousand dollars, shall be  
53 awarded by the appropriate officer, board or agency of a political  
54 subdivision or of any district therein including but not limited to a  
55 soil conservation district, to the lowest responsible bidder furnishing  
56 the required security after advertisement for sealed bids in the manner

1 provided by this section. In determining whether a purchase is an  
2 expenditure within the discretionary threshold amounts established by  
3 this subdivision, the officer, board or agency of a political subdivi-  
4 sion or of any district therein shall consider the reasonably expected  
5 aggregate amount of all purchases of the same commodities, services or  
6 technology to be made within the twelve-month period commencing on the  
7 date of purchase. Purchases of commodities, services or technology shall  
8 not be artificially divided for the purpose of satisfying the discre-  
9 tionary buying thresholds established by this subdivision. A change to  
10 or a renewal of a discretionary purchase shall not be permitted if the  
11 change or renewal would bring the reasonably expected aggregate amount  
12 of all purchases of the same commodities, services or technology from  
13 the same provider within the twelve-month period commencing on the date  
14 of the first purchase to an amount greater than the discretionary buying  
15 threshold amount. In any case where a responsible bidder's gross price  
16 is reducible by an allowance for the value of used machinery, equipment,  
17 apparatus or tools to be traded in by a political subdivision, the gross  
18 price shall be reduced by the amount of such allowance, for the purpose  
19 of determining the low bid. NOTWITHSTANDING THE FOREGOING, IN ANY CASE  
20 WHERE A RESPONSIBLE BIDDER WHO IS A NEW YORK STATE RESIDENT, FIRM OR  
21 CORPORATION AND WHO IS FURNISHING THE REQUIRED SECURITY IS FOUND BY SUCH  
22 OFFICER, BOARD OR AGENCY TO BE WITHIN TWO PERCENT OF THE BID OF THE  
23 LOWEST RESPONSIBLE BIDDER, SUCH OFFICER, BOARD OR AGENCY MAY PREFER SUCH  
24 RESPONSIBLE BIDDER OVER THE LOWEST RESPONSIBLE BIDDER AND AWARD THE  
25 CONTRACT TO SUCH RESPONSIBLE BIDDER; PROVIDED, HOWEVER, WHERE MORE THAN  
26 ONE RESPONSIBLE BIDDER QUALIFIES HEREUNDER, SUCH OFFICER, BOARD OR AGEN-  
27 CY SHALL AWARD THE CONTRACT TO SUCH QUALIFIED RESPONSIBLE BIDDER SUBMIT-  
28 TING THE LOWEST BID. In cases where two or more responsible bidders  
29 furnishing the required security submit identical bids as to price, such  
30 officer, board or agency may award the contract to any of such bidders.  
31 Such officer, board or agency may, in his, her or its discretion, reject  
32 all bids and readvertise for new bids in the manner provided by this  
33 section.

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

36 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHENEVER THE LOWEST  
37 RESPONSIBLE BIDDER IS A FOREIGN OR OUT-OF-STATE INDIVIDUAL, FIRM OR  
38 CORPORATION AND AT LEAST ONE NEW YORK STATE RESIDENT, FIRM OR CORPO-  
39 RATION HAS SUBMITTED A RESPONSIBLE BID WHICH IS WITHIN TWO PERCENT OF  
40 THE LOWEST RESPONSIBLE BID, THE CONTRACT MAY BE AWARDED TO THE LOWEST  
41 RESPONSIBLE BIDDER WHO IS A NEW YORK STATE RESIDENT, FIRM OR CORPO-  
42 RATION; PROVIDED, HOWEVER, WHERE MORE THAN ONE RESPONSIBLE BIDDER QUALI-  
43 FIES HEREUNDER, SUCH OFFICER, BOARD OR AGENCY SHALL AWARD THE CONTRACT  
44 TO SUCH QUALIFIED RESPONSIBLE BIDDER SUBMITTING THE LOWEST BID.

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