

4133

2011-2012 Regular Sessions

I N S E N A T E

March 21, 2011

Introduced by Sen. GALLIVAN -- 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 purchases through the office of general services

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. In cases where two or more
18 responsible bidders furnishing the required security submit identical
19 bids as to price, such officer, board or agency may award the contract
20 to any of such bidders. Such officer, board or agency may, in his or her
21 or its discretion, reject all bids and readvertise for new bids in the
22 manner provided by this section. In determining whether a purchase is an
23 expenditure within the discretionary threshold amounts established by
24 this subdivision, the officer, board or agency of a political subdivi-
25 sion or of any district therein shall consider the reasonably expected

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

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1 aggregate amount of all purchases of the same commodities, services or
2 technology to be made within the twelve-month period commencing on the
3 date of purchase. Purchases of commodities, services or technology
4 shall not be artificially divided for the purpose of satisfying the
5 discretionary buying thresholds established by this subdivision. A
6 change to or a renewal of a discretionary purchase shall not be permit-
7 ted if the change or renewal would bring the reasonably expected aggre-
8 gate amount of all purchases of the same commodities, services or tech-
9 nology from the same provider within the twelve-month period commencing
10 on the date of the first purchase to an amount greater than the discre-
11 tionary buying threshold amount. For purposes of this section, "sealed
12 bids", as that term applies to purchase contracts, shall include bids
13 submitted in an electronic format including submission of the statement
14 of non-collusion required by section one hundred three-d of this arti-
15 cle, provided that the governing board of the political subdivision or
16 district, by resolution, has authorized the receipt of bids in such
17 format. Submission in electronic format may, [for technology contracts
18 only,] be required as the sole method for the submission of bids. Bids
19 submitted in an electronic format shall be transmitted by bidders to the
20 receiving device designated by the political subdivision or district.
21 Any method used to receive electronic bids shall comply with article
22 three of the state technology law, and any rules and regulations promul-
23 gated and guidelines developed thereunder and, at a minimum, must (a)
24 document the time and date of receipt of each bid received electron-
25 ically; (b) authenticate the identity of the sender; (c) ensure the
26 security of the information transmitted; and (d) ensure the confiden-
27 tiality of the bid until the time and date established for the opening
28 of bids. The timely submission of an electronic bid in compliance with
29 instructions provided for such submission in the advertisement for bids
30 and/or the specifications shall be the responsibility solely of each
31 bidder or prospective bidder. No political subdivision or district ther-
32 ein shall incur any liability from delays of or interruptions in the
33 receiving device designated for the submission and receipt of electronic
34 bids.

35 S. 2. Subdivision 3 of section 103 of the general municipal law, as
36 amended by chapter 343 of the laws of 2007, is amended to read as
37 follows:

38 3. Notwithstanding the provisions of subdivision one of this section,
39 any officer, board or agency of a political subdivision or of any
40 district therein authorized to make purchases of materials, equipment or
41 supplies, or to contract for services, may make such purchases, or may
42 contract for services, [other than services subject to article eight or
43 nine of the labor law,] when available, through the county in which the
44 political subdivision or district is located or through any county with-
45 in the state subject to the rules established pursuant to subdivision
46 two of section four hundred eight-a of the county law; provided that the
47 political subdivision or district for which such officer, board or agen-
48 cy acts shall accept sole responsibility for any payment due the vendor
49 or contractor. All purchases and all contracts for such services shall
50 be subject to audit and inspection by the political subdivision or
51 district for which made. Prior to making such purchases or contracts the
52 officer, board or agency shall consider whether such contracts will
53 result in cost savings after all factors, including charges for service,
54 material, and delivery, have been considered. No officer, board or agen-
55 cy of a political subdivision or of any district therein shall make any
56 purchase or contract for any such services through the county in which

1 the political subdivision or district is located or through any county
2 within the state when bids have been received for such purchase or such
3 services by such officer, board or agency, unless such purchase may be
4 made or the contract for such services may be entered into upon the same
5 terms, conditions and specifications at a lower price through the coun-
6 ty.

7 S 3. Section 103 of the general municipal law is amended by adding two
8 new subdivisions 1-b and 14 to read as follows:

9 1-B. A POLITICAL SUBDIVISION OR ANY DISTRICT THEREIN SHALL HAVE THE
10 OPTION OF PURCHASING INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS HARD-
11 WARE, SOFTWARE AND PROFESSIONAL SERVICES THROUGH COOPERATIVE PURCHASING
12 PERMISSIBLE PURSUANT TO FEDERAL GENERAL SERVICES ADMINISTRATION INFORMA-
13 TION TECHNOLOGY SCHEDULE SEVENTY OR ANY SUCCESSOR SCHEDULE. A POLITICAL
14 SUBDIVISION OR ANY DISTRICT THEREIN THAT PURCHASES THROUGH GENERAL
15 SERVICES ADMINISTRATION SCHEDULE SEVENTY, INFORMATION TECHNOLOGY AND
16 CONSOLIDATED SCHEDULE CONTRACTS SHALL COMPLY WITH FEDERAL SCHEDULE
17 ORDERING PROCEDURES AS PROVIDED IN FEDERAL ACQUISITION REGULATION
18 8.405-1 OR 8.405-2 OR SUCCESSOR REGULATIONS, WHICHEVER IS APPLICABLE.
19 ADHERENCE TO SUCH PROCEDURES SHALL CONSTITUTE COMPLIANCE WITH THE
20 COMPETITIVE BIDDING REQUIREMENTS UNDER THIS SECTION.

21 14. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION
22 AND IN ADDITION TO THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION
23 AND SECTION ONE HUNDRED FOUR OF THIS ARTICLE, ANY OFFICER, BOARD OR
24 AGENCY OF A POLITICAL SUBDIVISION OR OF ANY DISTRICT THEREIN AUTHORIZED
25 TO MAKE PURCHASES OF SERVICES, MATERIALS, EQUIPMENT AND SUPPLIES MAY
26 MAKE SUCH PURCHASES AS MAY BE REQUIRED BY SUCH POLITICAL SUBDIVISION OR
27 ANY DISTRICT THEREIN THROUGH THE USE OF A CONTRACT LET BY ANY OTHER
28 STATE OR POLITICAL SUBDIVISION IF SUCH CONTRACT WAS LET IN ACCORDANCE
29 WITH COMPETITIVE BIDDING AND WAGE REQUIREMENTS THAT ARE CONSISTENT WITH
30 THIS SECTION AND WITH THE INTENT OF EXTENDING ITS USE TO CERTAIN OTHER
31 GOVERNMENTAL ENTITIES. PRIOR TO MAKING SUCH A PURCHASE, THE GOVERNING
32 BOARD OF THE POLITICAL SUBDIVISION OR DISTRICT MAKING THE PURCHASE SHALL
33 DETERMINE, UPON REVIEW OF ANY NECESSARY DOCUMENTATION AND, AS APPROPRI-
34 ATE, UPON ADVICE OF ITS COUNSEL, THAT THE REQUIREMENTS OF THIS PARAGRAPH
35 HAVE BEEN MET, AND SHALL CERTIFY, BY RESOLUTION, THAT SUCH PURCHASE IS
36 PERMITTED UNDER THE PROCUREMENT POLICIES AND PROCEDURES OF THE POLITICAL
37 SUBDIVISION OR DISTRICT, ADOPTED PURSUANT TO SECTION ONE HUNDRED FOUR-B
38 OF THIS ARTICLE.

39 S 4. Section 104 of the general municipal law, as amended by chapter
40 137 of the laws of 2008, is amended to read as follows:

41 S 104. Purchase through office of general services; CERTAIN FEDERAL
42 CONTRACTS. 1. Notwithstanding the provisions of section one hundred
43 three of this article or of any other general, special or local law, any
44 officer, board or agency of a political subdivision, of a district ther-
45 ein, of a fire company or of a voluntary ambulance service authorized to
46 make purchases of materials, equipment, food products, or supplies, or
47 services available pursuant to sections one hundred sixty-one and one
48 hundred sixty-seven of the state finance law, may make such purchases,
49 except of printed material, through the office of general services
50 subject to such rules as may be established from time to time pursuant
51 to sections one hundred sixty-three and one hundred sixty-seven of the
52 state finance law [or through the general services administration pursu-
53 ant to section 1555 of the federal acquisition streamlining act of 1994,
54 P.L. 103-355]; provided that any such purchase shall exceed five hundred
55 dollars and that the political subdivision, district, fire company or
56 voluntary ambulance service for which such officer, board or agency acts

1 shall accept sole responsibility for any payment due the vendor. All
2 purchases shall be subject to audit and inspection by the political
3 subdivision, district, fire company or voluntary ambulance service for
4 which made. No officer, board or agency of a political subdivision, or a
5 district therein, of a fire company or of a voluntary ambulance service
6 shall make any purchase through such office when bids have been received
7 for such purchase by such officer, board or agency, unless such purchase
8 may be made upon the same terms, conditions and specifications at a
9 lower price through such office. Two or more fire companies or voluntary
10 ambulance services may join in making purchases pursuant to this
11 section, and for the purposes of this section such groups shall be
12 deemed "fire companies or voluntary ambulance services."

13 2. NOTWITHSTANDING THE PROVISIONS OF SECTION ONE HUNDRED THREE OF THIS
14 ARTICLE OR OF ANY OTHER GENERAL, SPECIAL OR LOCAL LAW, ANY OFFICER,
15 BOARD OR AGENCY OF A POLITICAL SUBDIVISION, OR OF A DISTRICT THEREIN,
16 MAY MAKE PURCHASES FROM FEDERAL GENERAL SERVICE ADMINISTRATION SUPPLY
17 SCHEDULES PURSUANT TO SECTION 211 OF THE FEDERAL E-GOVERNMENT ACT OF
18 2002, P.L. 107-347, AND PURSUANT TO SECTION 1122 OF THE NATIONAL DEFENSE
19 AUTHORIZATION ACT FOR FISCAL YEAR 1994, P.L. 103-160, OR ANY SUCCESSOR
20 SCHEDULES IN ACCORDANCE WITH PROCEDURES ESTABLISHED PURSUANT THERETO.
21 PRIOR TO MAKING SUCH PURCHASES THE OFFICER, BOARD OR AGENCY SHALL
22 CONSIDER WHETHER SUCH PURCHASES WILL RESULT IN COST SAVINGS AFTER ALL
23 FACTORS, INCLUDING CHARGES FOR SERVICE, MATERIAL, AND DELIVERY, HAVE
24 BEEN CONSIDERED.

25 S 5. This act shall take effect immediately; provided, however, that
26 the amendments to subdivision 1 of section 103 of the general municipal
27 law made by section one of this act shall not affect the expiration of
28 such subdivision and shall be deemed to expire therewith.