

4133--A

Cal. No. 539

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general municipal law and the county 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

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

LBD10269-02-1

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

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

41 3. Notwithstanding the provisions of subdivision one of this section,
42 any officer, board or agency of a political subdivision or of any
43 district therein authorized to make purchases of materials, equipment or
44 supplies, or to contract for services, may make such purchases, or may
45 contract for services, [other than services subject to article eight or
46 nine of the labor law,] when available, through the county in which the
47 political subdivision or district is located or through any county with-
48 in the state subject to the rules established pursuant to subdivision
49 two of section four hundred eight-a of the county law; provided that the
50 political subdivision or district for which such officer, board or agen-
51 cy acts shall accept sole responsibility for any payment due the vendor
52 or contractor. All purchases and all contracts for such services shall
53 be subject to audit and inspection by the political subdivision or
54 district for which made. Prior to making such purchases or contracts the
55 officer, board or agency shall consider whether such contracts will
56 result in cost savings after all factors, including charges for service,

1 material, and delivery, have been considered. No officer, board or agen-
2 cy of a political subdivision or of any district therein shall make any
3 purchase or contract for any such services through the county in which
4 the political subdivision or district is located or through any county
5 within the state when bids have been received for such purchase or such
6 services by such officer, board or agency, unless such purchase may be
7 made or the contract for such services may be entered into upon the same
8 terms, conditions and specifications at a lower price through the coun-
9 ty.

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

12 1-B. A POLITICAL SUBDIVISION OR ANY DISTRICT THEREIN SHALL HAVE THE
13 OPTION OF PURCHASING INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS HARD-
14 WARE, SOFTWARE AND PROFESSIONAL SERVICES THROUGH COOPERATIVE PURCHASING
15 PERMISSIBLE PURSUANT TO FEDERAL GENERAL SERVICES ADMINISTRATION INFORMA-
16 TION TECHNOLOGY SCHEDULE SEVENTY OR ANY SUCCESSOR SCHEDULE. A POLITICAL
17 SUBDIVISION OR ANY DISTRICT THEREIN THAT PURCHASES THROUGH GENERAL
18 SERVICES ADMINISTRATION SCHEDULE SEVENTY, INFORMATION TECHNOLOGY AND
19 CONSOLIDATED SCHEDULE CONTRACTS SHALL COMPLY WITH FEDERAL SCHEDULE
20 ORDERING PROCEDURES AS PROVIDED IN FEDERAL ACQUISITION REGULATION
21 8.405-1 OR 8.405-2 OR SUCCESSOR REGULATIONS, WHICHEVER IS APPLICABLE.
22 ADHERENCE TO SUCH PROCEDURES SHALL CONSTITUTE COMPLIANCE WITH THE
23 COMPETITIVE BIDDING REQUIREMENTS UNDER THIS SECTION.

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

42 S 4. Section 104 of the general municipal law, as amended by chapter
43 137 of the laws of 2008, is amended to read as follows:

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

1 P.L. 103-355]; provided that any such purchase shall exceed five hundred
2 dollars and that the political subdivision, district, fire company or
3 voluntary ambulance service for which such officer, board or agency acts
4 shall accept sole responsibility for any payment due the vendor. All
5 purchases shall be subject to audit and inspection by the political
6 subdivision, district, fire company or voluntary ambulance service for
7 which made. No officer, board or agency of a political subdivision, or a
8 district therein, of a fire company or of a voluntary ambulance service
9 shall make any purchase through such office when bids have been received
10 for such purchase by such officer, board or agency, unless such purchase
11 may be made upon the same terms, conditions and specifications at a
12 lower price through such office. Two or more fire companies or voluntary
13 ambulance services may join in making purchases pursuant to this
14 section, and for the purposes of this section such groups shall be
15 deemed "fire companies or voluntary ambulance services."

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

28 S 5. Subdivision 2 of section 408-a of the county law, as amended by
29 section 2 of part X of chapter 62 of the laws of 2003, is amended to
30 read as follows:

31 2. The board of supervisors may, in the case of any purchase contract
32 or any contract for services, [other than services subject to article
33 eight or nine of the labor law,] of the county to be awarded to the
34 lowest responsible bidder after advertisement for bids, authorize the
35 inclusion of a provision whereby purchases may be made or such services
36 may be obtained under such contract by any political subdivision or fire
37 company (as both are defined in section one hundred of the general
38 municipal law) or district. In such event, the board shall adopt rules
39 prescribing the conditions under which, and the manner in which,
40 purchases may be made or services may be obtained by such political
41 subdivision, fire company or district.

42 S 6. This act shall take effect immediately; provided, however, that
43 the amendments to subdivision 1 of section 103 of the general municipal
44 law made by section one of this act shall not affect the expiration of
45 such subdivision and shall be deemed to expire therewith.