

4753

2011-2012 Regular Sessions

I N   S E N A T E

April 18, 2011

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Introduced by Sen. RANZENHOFER -- 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 obtaining best  
value for contracts for public work and purchase contracts

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1.     The section heading and subdivision 1 of section 103 of  
2     the general municipal law, the section heading as amended by chapter 997  
3     of the laws of 1960 and subdivision 1 as amended by section 1 of part FF  
4     of chapter 56 of the laws of 2010, are amended to read as follows:  
5     Advertising for bids AND OFFERS; letting of contracts; criminal  
6     conspiracies. 1. Except as otherwise expressly provided by an act of the  
7     legislature or by a local law adopted prior to September first, nineteen  
8     hundred fifty-three, all contracts for public work involving an expendi-  
9     ture of more than thirty-five thousand dollars and all purchase  
10    contracts involving an expenditure of more than twenty thousand dollars,  
11    shall be awarded by the appropriate officer, board or agency of a poli-  
12    tical subdivision or of any district therein including but not limited  
13    to a soil conservation district, [to the lowest responsible bidder] ON  
14    THE BASIS OF BEST VALUE, AS DEFINED IN SECTION ONE HUNDRED SIXTY-THREE  
15    OF THE STATE FINANCE LAW, TO A RESPONSIVE AND RESPONSIBLE BIDDER OR  
16    OFFERER furnishing the required security after advertisement for sealed  
17    bids OR SEALED OFFERS in the manner provided by this section. In any  
18    case where a responsible bidder's OR RESPONSIBLE OFFERER'S gross price  
19    is reducible by an allowance for the value of used machinery, equipment,  
20    apparatus or tools to be traded in by a political subdivision, the gross  
21    price shall be reduced by the amount of such allowance, for the purpose  
22    of determining the [low bid] BEST VALUE. [In cases where two or more  
23    responsible bidders furnishing the required security submit identical  
24    bids as to price, such officer, board or agency may award the contract  
25    to any of such bidders.] Such officer, board or agency may, in his or

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

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1 her or its discretion, reject all bids AND OFFERS and readvertise for  
2 new bids AND OFFERS in the manner provided by this section. In determin-  
3 ing whether a purchase is an expenditure within the discretionary thresh-  
4 hold amounts established by this subdivision, the officer, board or  
5 agency of a political subdivision or of any district therein shall  
6 consider the reasonably expected aggregate amount of all purchases of  
7 the same commodities, services or technology to be made within the  
8 twelve-month period commencing on the date of purchase. Purchases of  
9 commodities, services or technology shall not be artificially divided  
10 for the purpose of satisfying the discretionary buying thresholds estab-  
11 lished by this subdivision. A change to or a renewal of a discretionary  
12 purchase shall not be permitted if the change or renewal would bring the  
13 reasonably expected aggregate amount of all purchases of the same  
14 commodities, services or technology from the same provider within the  
15 twelve-month period commencing on the date of the first purchase to an  
16 amount greater than the discretionary buying threshold amount. For  
17 purposes of this section, "sealed bids" AND "SEALED OFFERS"[, as that  
18 term applies to purchase contracts,] shall include bids AND OFFERS  
19 submitted in an electronic format including submission of the statement  
20 of non-collusion required by section one hundred three-d of this arti-  
21 cle, provided that the governing board of the political subdivision or  
22 district, by resolution, has authorized the receipt of bids AND OFFERS  
23 in such format. Submission in electronic format may, for technology  
24 contracts only, be required as the sole method for the submission of  
25 bids AND OFFERS. Bids AND OFFERS submitted in an electronic format shall  
26 be transmitted by bidders AND OFFERERS to the receiving device desig-  
27 nated by the political subdivision or district. Any method used to  
28 receive electronic bids AND OFFERS shall comply with article three of  
29 the state technology law, and any rules and regulations promulgated and  
30 guidelines developed thereunder and, at a minimum, must (a) document the  
31 time and date of receipt of each bid AND OFFER received electronically;  
32 (b) authenticate the identity of the sender; (c) ensure the security of  
33 the information transmitted; and (d) ensure the confidentiality of the  
34 bid AND OFFER until the time and date established for the opening of  
35 bids AND OFFERS. The timely submission of an electronic bid AND OFFER in  
36 compliance with instructions provided for such submission in the adver-  
37 tisement for bids AND OFFERS and/or the specifications shall be the  
38 responsibility solely of each bidder OR OFFERER or prospective bidder OR  
39 OFFERER. No political subdivision or district therein shall incur any  
40 liability from delays of or interruptions in the receiving device desig-  
41 nated for the submission and receipt of electronic bids AND OFFERS.

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

45 1. Except as otherwise expressly provided by an act of the legislature  
46 or by a local law adopted prior to September first, nineteen hundred  
47 fifty-three, all contracts for public work involving an expenditure of  
48 more than thirty-five thousand dollars and all purchase contracts  
49 involving an expenditure of more than twenty thousand dollars, shall be  
50 awarded by the appropriate officer, board or agency of a political  
51 subdivision or of any district therein including but not limited to a  
52 soil conservation district, [to the lowest responsible bidder] ON THE  
53 BASIS OF BEST VALUE, AS DEFINED IN SECTION ONE HUNDRED SIXTY-THREE OF  
54 THE STATE FINANCE LAW, TO A RESPONSIVE AND RESPONSIBLE OFFERER furnish-  
55 ing the required security after advertisement for sealed bids OR SEALED  
56 OFFERS in the manner provided by this section. In determining whether a

1 purchase is an expenditure within the discretionary threshold amounts  
2 established by this subdivision, the officer, board or agency of a poli-  
3 tical subdivision or of any district therein shall consider the reason-  
4 ably expected aggregate amount of all purchases of the same commodities,  
5 services or technology to be made within the twelve-month period  
6 commencing on the date of purchase. Purchases of commodities, services  
7 or technology shall not be artificially divided for the purpose of  
8 satisfying the discretionary buying thresholds established by this  
9 subdivision. A change to or a renewal of a discretionary purchase shall  
10 not be permitted if the change or renewal would bring the reasonably  
11 expected aggregate amount of all purchases of the same commodities,  
12 services or technology from the same provider within the twelve-month  
13 period commencing on the date of the first purchase to an amount greater  
14 than the discretionary buying threshold amount. In any case where a  
15 responsible bidder's OR RESPONSIBLE OFFERER'S gross price is reducible  
16 by an allowance for the value of used machinery, equipment, apparatus or  
17 tools to be traded in by a political subdivision, the gross price shall  
18 be reduced by the amount of such allowance, for the purpose of determin-  
19 ing the [low bid] BEST VALUE. [In cases where two or more responsible  
20 bidders furnishing the required security submit identical bids as to  
21 price, such officer, board or agency may award the contract to any of  
22 such bidders.] Such officer, board or agency may, in his, her or its  
23 discretion, reject all bids AND OFFERS and readvertise for new bids AND  
24 OFFERS in the manner provided by this section.

25 S 3. Subdivision 1-a of section 103 of the general municipal law, as  
26 added by chapter 595 of the laws of 1979, is amended to read as follows:

27 1-a. Whenever possible, practical, and feasible and consistent with  
28 open competitive bidding AND COMPETITIVE OFFERING, the officer, board or  
29 agency of any political subdivision or of any district therein charged  
30 with the awarding of contracts may use the stock item specifications of  
31 manufacturers, producers and/or assemblers located in New York state in  
32 developing specifications for items to be let for bid OR OFFER in its  
33 purchasing contracts and may use the data and information contained in  
34 stock item specifications forms [as provided in section one hundred  
35 sixty-four-a of the state finance law] to assist in his determination of  
36 what constitutes a stock item of a manufacturer, producer and/or assem-  
37 bler located in New York state for the purpose of helping to retain  
38 jobs, business and industry presently in the state of New York and  
39 attracting expanded and new business and industry to the state of New  
40 York so as to best promote the public interest.

41 S 4. Subdivision 2 of section 103 of the general municipal law, as  
42 amended by section 5 of part X of chapter 62 of the laws of 2003, is  
43 amended to read as follows:

44 2. Advertisement for bids AND OFFERS shall be published in the offi-  
45 cial newspaper or newspapers, if any, or otherwise in a newspaper or  
46 newspapers designated for such purpose. Such advertisement shall contain  
47 a statement of the time when and place where all bids AND OFFERS  
48 received pursuant to such notice will be publicly opened and read, and  
49 the designation of the receiving device if the political subdivision or  
50 district has authorized the receipt of bids AND OFFERS in an electronic  
51 format. Such board or agency may by resolution designate any officer or  
52 employee to open the bids AND OFFERS at the time and place specified in  
53 the notice. Such designee shall make a record of such bids AND OFFERS in  
54 such form and detail as the board or agency shall prescribe and present  
55 the same at the next regular or special meeting of such board or agency.  
56 All bids AND OFFERS received shall be publicly opened and read at the

1 time and place so specified. At least five days shall elapse between the  
2 first publication of such advertisement and the date so specified for  
3 the opening and reading of bids AND OFFERS.

4 S 5. Subdivision 2 of section 103 of the general municipal law, as  
5 amended by chapter 296 of the laws of 1958, is amended to read as  
6 follows:

7 2. Advertisement for bids AND OFFERS shall be published in the offi-  
8 cial newspaper or newspapers, if any, or otherwise in a newspaper or  
9 newspapers designated for such purpose. Such advertisement shall contain  
10 a statement of the time when and place where all bids AND OFFERS  
11 received pursuant to such notice will be publicly opened and read. Such  
12 board or agency may by resolution designate any officer or employee to  
13 open the bids AND OFFERS at the time and place specified in the notice.  
14 Such designee shall make a record of such bids AND OFFERS in such form  
15 and detail as the board or agency shall prescribe and present the same  
16 at the next regular or special meeting of such board or agency. All bids  
17 AND OFFERS received shall be publicly opened and read at the time and  
18 place so specified. At least five days shall elapse between the first  
19 publication of such advertisement and the date so specified for the  
20 opening and reading of bids AND OFFERS.

21 S 6. Subdivision 3 of section 103 of the general municipal law, as  
22 amended by chapter 343 of the laws of 2007, is amended to read as  
23 follows:

24 3. Notwithstanding the provisions of subdivision one of this section,  
25 any officer, board or agency of a political subdivision or of any  
26 district therein authorized to make purchases of materials, equipment or  
27 supplies, or to contract for services, may make such purchases, or may  
28 contract for services, other than services subject to article eight or  
29 nine of the labor law, when available, through the county in which the  
30 political subdivision or district is located or through any county with-  
31 in the state subject to the rules established pursuant to subdivision  
32 two of section four hundred eight-a of the county law; provided that the  
33 political subdivision or district for which such officer, board or agen-  
34 cy acts shall accept sole responsibility for any payment due the vendor  
35 or contractor. All purchases and all contracts for such services shall  
36 be subject to audit and inspection by the political subdivision or  
37 district for which made. Prior to making such purchases or contracts the  
38 officer, board or agency shall consider whether such contracts will  
39 result in cost savings after all factors, including charges for service,  
40 material, and delivery, have been considered. No officer, board or agen-  
41 cy of a political subdivision or of any district therein shall make any  
42 purchase or contract for any such services through the county in which  
43 the political subdivision or district is located or through any county  
44 within the state when bids AND OFFERS have been received for such  
45 purchase or such services by such officer, board or agency, unless such  
46 purchase may be made or the contract for such services may be entered  
47 into upon the same terms, conditions and specifications at a lower price  
48 through the county.

49 S 7. Subdivision 4 of section 103 of the general municipal law, as  
50 amended by chapter 597 of the laws of 1963, is amended to read as  
51 follows:

52 4. Notwithstanding the provisions of subdivision one of this section,  
53 in the case of a public emergency arising out of an accident or other  
54 unforeseen occurrence or condition whereby circumstances affecting  
55 public buildings, public property or the life, health, safety or proper-  
56 ty of the inhabitants of a political subdivision or district therein,

1 require immediate action which cannot await competitive bidding OR  
2 COMPETITIVE OFFERING, contracts for public work or the purchase of  
3 supplies, material or equipment may be let by the appropriate officer,  
4 board or agency of a political subdivision or district therein.

5 S 8. Subdivision 5 of section 103 of the general municipal law, as  
6 amended by section 3 of part FF of chapter 56 of the laws of 2010, is  
7 amended to read as follows:

8 5. Upon the adoption of a resolution by a vote of at least three-  
9 fifths of all the members of the governing body of a political subdivi-  
10 sion or district therein stating that, for reasons of efficiency or  
11 economy, there is need for standardization, purchase contracts for a  
12 particular type or kind of equipment, material or supplies in excess of  
13 the monetary threshold fixed for purchase contracts in this section may  
14 be awarded by the appropriate officer, board or agency of such political  
15 subdivision or any such district therein, to the lowest responsible  
16 bidder OR RESPONSIBLE OFFERER furnishing the required security after  
17 advertisement for sealed bids OR SEALED OFFERS therefor in the manner  
18 provided in this section. Such resolution shall contain a full explana-  
19 tion of the reasons for its adoption.

20 S 9. Subdivision 6 of section 103 of the general municipal law, as  
21 amended by chapter 315 of the laws of 1974, is amended to read as  
22 follows:

23 6. Surplus and second-hand supplies, material or equipment may be  
24 purchased without competitive bidding AND COMPETITIVE OFFERING from the  
25 federal government, the state of New York or from any other political  
26 subdivision, district or public benefit corporation.

27 S 10. Subdivision 7 of section 103 of the general municipal law, as  
28 amended by chapter 8 of the laws of 2008, is amended to read as follows:

29 7. A person or corporation who conspires to prevent competitive  
30 bidding OR COMPETITIVE OFFERING on a contract for public work or  
31 purchase advertised for bidding OR OFFERING shall be guilty of a misde-  
32 meanor as provided in section one hundred three-e of this article.

33 S 11. Subdivision 15 of section 103 of the general municipal law, as  
34 added by section 1-a of part MM of chapter 57 of the laws of 2008, is  
35 amended to read as follows:

36 15. (a) Notwithstanding any general, special or local law or rule or  
37 regulation to the contrary, an officer, board or agency of any county,  
38 any school district or any political subdivision of the state with a  
39 population of fifty thousand or more charged with awarding a contract  
40 for public work may establish guidelines governing the qualifications of  
41 bidders AND OFFERERS seeking to bid, OFFER or enter into such contracts.  
42 If such officer, board or agency maintains an appropriate list of quali-  
43 fied bidders AND OFFERERS, the bidding AND OFFERING shall be restricted  
44 to those who have qualified prior to the receipt of bids AND OFFERS  
45 according to standards fixed by such officer, board or agency. In deter-  
46 mining whether a prospective bidder OR OFFERER qualifies for inclusion  
47 on a list of pre-qualified bidders OR OFFERERS, the officer, board or  
48 agency shall consider the experience and record of performance of the  
49 prospective bidder OR OFFERER in the particular type of work, as well  
50 as: (i) the prospective bidder's OR OFFERER'S ability to undertake the  
51 particular type and complexity of work; (ii) the financial capability,  
52 responsibility and reliability of the prospective bidder OR OFFERER for  
53 such type and complexity of work; (iii) the record of the prospective  
54 bidder OR OFFERER in complying with existing labor standards and main-  
55 taining harmonious labor relations; (iv) the prospective bidder's OR  
56 OFFERER'S compliance with equal employment opportunity requirements and

1 anti-discrimination laws, and demonstrated commitment to working with  
2 minority and women-owned businesses through joint ventures or subcon-  
3 tractor relationships; and (v) the record of the prospective bidder OR  
4 OFFERER in protecting the health and safety of workers on public works  
5 projects and job sites as demonstrated by the prospective bidder's OR  
6 OFFERER'S experience modification rate for each of the last three years.

7 (b) Such public officer, board or agency shall, not less than annual-  
8 ly, publish in a newspaper of general circulation in such political  
9 subdivision an advertisement requesting prospective bidders AND OFFERERS  
10 to submit qualification statements. Lists of pre-qualified bidders AND  
11 OFFERERS may be established on a project-specific basis. Prequalified  
12 lists shall include all bidders AND OFFERERS that qualify; provided,  
13 however, that any such list shall have no less than five bidders OR  
14 OFFERERS but shall remain open for all additional qualified bidders OR  
15 OFFERERS AS APPLICABLE. The public officer, board or agency's procedures  
16 for prequalifying bidders OR OFFERERS shall include an appeals process  
17 for those denied a place on a pre-qualified list. Any denial must be  
18 based upon substantial evidence, cannot be arbitrary or capricious, and  
19 shall be subject to judicial review pursuant to article seventy-eight of  
20 the civil practice law and rules. The public officer, board or agency  
21 may move forward on the contract award during such appeals.

22 (c) Any school district or political subdivision of the state with a  
23 population of less than fifty thousand may utilize a list of pre-quali-  
24 fied bidders OR OFFERERS maintained by the county within which the  
25 subdivision is located, if such list is maintained.

26 S 12. The section heading and subdivision 1 of section 103-e of the  
27 general municipal law, as added by chapter 1031 of the laws of 1965, are  
28 amended to read as follows:

29 Conspiracies to prevent competitive bidding OR COMPETITIVE OFFERING on  
30 public contracts. 1. A person or corporation who shall wilfully, know-  
31 ingly and with intent to defraud, make or enter into, or attempt to make  
32 or enter into, with any other person or corporation, a contract, agree-  
33 ment, arrangement or combination to submit a fraudulent or collusive bid  
34 OR OFFER, or to refrain from submitting a bona fide competitive bid OR  
35 COMPETITIVE OFFER, to any board, officer, agency, department, commission  
36 or other agency of the state or of a public corporation on a contract  
37 for public work or purchase which has been advertised for bidding OR  
38 OFFERING, shall be guilty of a misdemeanor, and on conviction thereof  
39 shall, if a natural person, be punished by a fine not exceeding five  
40 thousand dollars or by imprisonment for not longer than one year, or by  
41 both such fine and imprisonment, and if a corporation by a fine not  
42 exceeding twenty thousand dollars. An indictment or information based  
43 upon a violation of any provision of this section must be found within  
44 three years after its commission.

45 S 13. This act shall take effect immediately and shall apply to any  
46 contract let or awarded on or after such date; provided, however, that  
47 the amendments to subdivision 1 and 2 of section 103 of the general  
48 municipal law made by sections one and three of this act shall not  
49 affect the expiration and reversion of such subdivisions as provided in  
50 subdivision (a) of section 41 of part X of chapter 62 of the laws of  
51 2003, as amended, when upon such date the provisions of sections two and  
52 four of this act shall take effect.